

***United States Court of Appeals
for the Second Circuit***



APPENDIX

75-1154

ORIGINAL

In The
United States Court of Appeals
For The Second Circuit

UNITED STATES OF AMERICA,

Appellee,

vs.

HOWARD FINKELSTEIN, a/k/a ROBERT HOWARD,
ANTHONY SCARDINO, ALAN SEGAL and EDWARD
ZUBER,

Appellants.

*On Appeal from the United States District Court for the
Southern District of New York*

JOINT APPENDIX

Volume II, pp. JA301 - JA600

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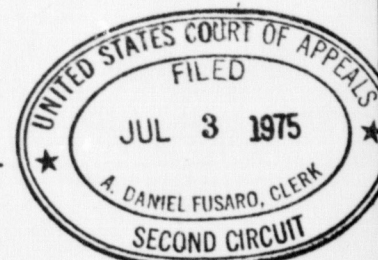
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Q Do you know who the sentencing judge will be?

A Yes, sir.

Q Who?

A Judge MacMahon.

MR. WALKER: I have no further questions of this witness, your Honor.

MR. DOYLE: Your Honor, may we have a recess at this time?

Thank you.

(Short recess.)

jkh 1

Acton-direct

(Jury present.)

THE COURT: Mr. Walker and Mr. Doyle, will you come up here, please.

(Side bar.)

THE COURT: I want you to ask defense counsel not to repeat the same cross-examination five times now.

MR. DOYLE: Yes. We have been over that.

MR. WALKER: There are ~~two~~ exhibits I would like to have identified before the cross.

THE COURT: All right.

(Open court.)

BY MR. WALKER:

Q Mr. Acton, I would like to show you two exhibits, Government's Exhibit 7 for identification and Government Exhibit 8 for identification. Can you identify these documents?

A Yes, sir.

Q What are they? What is 7?

A The Lone Tree Mining Company corporate records and the Lone Tree Mining Company stock book.

MR. WALKER: I offer them.

MR. DOYLE: No objection, your Honor.

THE COURT: Received.

(Government's Exhibit 7 and 8 received in evidence.)

THE COURT: Does that complete your direct?

MR. WALKER: Yes, your Honor, that completes it.

THE COURT: All right, cross-examine.

CROSS-EXAMINATION

BY MR. DOYLE:

Q Mr. Acton, the Pioneer Development Corporation is a corporation that goes back to 1918, doesn't it?

A Yes, sir, somewhere back there.

Q It was incorporated in 1918 in Nevada and had a continuous existence from that time until the time that you became associated with the company, isn't that correct?

A As far as I know, it might have had some lapses in it, but --

Q And are you familiar with the corporate documents of Pioneer Development Corporation?

A Yes, sir.

MR. DOYLE: Your Honor, may this group of documents be marked Defendant Segal's Exhibit A for identification collectively?

THE COURT: I asked you to mark them yourself before trial, as you recall.

MR. DOYLE: Yes, sir. I wasn't sure I was going to go into this.

1 jkh3
2 THE COURT: All right.

3 (Defendant Segal Exhibit A marked for identifica-
4 tion.)

xx 5 BY MR. DOYLE:

6 Q Mr. Acton, I show you Defendant Segal's A for
7 identification and ask you if you can identify it.

8 A Yes, sir.

9 Q Is that the original articles of incorporation
10 of the Pioneer Development Corporation and then the various
11 amendments that were made over the years to those articles
12 of incorporation?

13 A Yes, sir.

14 MR. DOYLE: I offer it in evidence.

15 MR. WALKER: May I see that document?

16 No objection.

xx 17 (Defendant Segal Exhibit A received in evidence.)

18 Q Now, Mr. Acton, with respect to the assets that
19 were put into Pioneer Development Corporation, as you
20 testified to on direct examination, and referring specifi-
21 cally to Lone Tree Mining claims, you, in fact, believed
22 in good faith that these were valuable claims, didn't you?

23 A Yes, sir.

24 Q And you knew Sheldon Lamb, the owner of the claims,
25 very well?

jkh4

Acton-cross

1

2

A Yes, sir.

3

4

Q Isn't that a fact? And Mr. Lamb told you on numerous occasions that he had a very high opinion of the value of these claims?

5

6

A Yes, sir.

7

Q And you believed him?

8

A Yes, sir.

9

10

Q He showed you various reports with respect to the value of the claims?

11

A Yes, sir.

12

13

Q And you have identified at least one of those reports here, which has been marked in evidence?

14

A Yes, sir.

15

16

Q Did you read the report that was marked here in evidence?

17

A Yes, sir.

18

19

20

Q And did you read other reports and assay reports, geological surveys about the mine that were furnished to you by Mr. Lamb?

21

A Yes, sir.

22

23

Q And did you rely on all those materials in reaching your belief that the mine was an extremely valuable claim?

24

A Yes, sir.

25

Q Mr. Lamb and some of his associates filed documents

1 jkh5
2 with the County Clerk's office locating those claims;
3 you are aware of that, aren't you?

4 A Yes, sir.

5 MR. DOYLE: Your Honor, may this group be marked
6 Defendant's Exhibit B for identification?

7 THE COURT: Yes. To save time would you just
8 take a pencil and mark them yourself for identification?

9 MR. DOYLE: Yes, your Honor.

10 (Defendant Segal Exhibit B marked for identifica-
xx 11 tion.)

12 Q I show you Defendant Segal's Exhibit B for identi-
13 fication and ask you if you can identify them.

14 A Yes, these are location certificates, filed in
15 Churchill County on the claims that we had.

16 MR. DOYLE: I offer them in evidence, your Honor.

17 MR. WALKER: No objection.

18 THE COURT: Received.

19 (Defendant Segal's Exhibit B received in evidence.)
xx 20

21 MR. DOYLE: Your Honor, may I simply describe
22 to the jury --

23 THE COURT: Let her mark them.

24 MR. DOYLE: -- that they consist of eight official
25 records of Churchill County, Nevada, with respect to locators
of mine claims, and one of three locators of the mine claims

jkb6

Acton-cross

1 with respect to each one is Mr. Sheldon Lamb, together
2 with three associates, and in one instance, Mr. Floyd
3 Lamb is mentioned as one of the locators of the mine claims.
4

5 Q You have talked about various conversations
6 with my client, Mr. Alan Segal. That included discussion
7 of the mining claims, isn't that correct, Mr. Acton?

8 A Yes, sir.

9 Q On all those occasions you expressed very op-
10 timistic opinions about the value of the claim, isn't that
11 correct?

12 A Yes, sir.

13 Q And Mr. Sheldon Lamb, when he talked to my client,
14 Alan Segal, in your presence, also expressed the same
15 optimistic opinions and viewpoints about the mine to Mr.
16 Segal as he had expressed to you, isn't that correct?

17 A Yes, sir.

18 MR. WALKER: Your Honor, could we have this pin-
19 pointed in which particular conversation?

20 THE COURT: He says all of them. I assume Mr.
21 Acton understands the question.

22 MR. WALKER: Can we have a time and place of
23 any particular conversation?

24 Q I believe you testified to about four meetings
25 with Alan Segal during 1969 yesterday in your direct

jkh7

Acton-cross

1 testimony and you said that at least on some of those
2 occasions there was conversation about the mine and I
3 believe that Mr. Lamb was present at at least one of them.
4

5 A Yes.

6 Q Now, directing your attention to those specific
7 conversations with Mr. Segal, when the mine was brought up,
8 is your answer still the same?

9 A Yes, sir.

10 Q Now, in fact, Mr. Lamb told you that the Howard
11 Hughes organization had offered many millions of dollars
12 for the claims, didn't he, sir?

13 A Yes, sir.

14 Q And he also told you that he had turned down
15 that offer because he felt it was insufficient?

16 A Yes, sir.

17 Q And he showed you some documentation with respect
18 to that, didn't he?

19 A Documentation with respect to the offer?

20 Q With respect to the Hughes organization offer;
21 did he show you a report of a Mr. Hatsis, establishing--

22 THE COURT: Please don't nod your head. You have
23 to answer.

24 THE WITNESS: I'm sorry, sir.

25 THE COURT: The reporter can't hear you nod your

b2

1 jkh8

Acton-cross

2 head.

3 THE WITNESS: I'm sorry, sir.

4 A Yes, sir, I saw a report from Mr. Hatsis.

5 Q Do you have that report in your possession, Mr.
6 Acton?

7 A No, sir.

8 Q Do you have any idea of its whereabouts at this
9 time?

10 A No, sir.

11 Q Now, in connection with the mining claims, did
12 you have any contact or conversations with a gentleman by
13 the name of Mr. Myron Buttram?

14 A Yes, sir.

15 Q And Mr. Buttram, sir, is the inventor of the
16 process called the Cully Mill or disintegrator process,
17 isn't he?

18 A No, sir, he owns it. He didn't invent it.

19 Q He was the owner of it?

20 A Yes.

21 Q Was that a patent?

22 A Yes, as I understand it.

23 Q Did you have various telephone conversations
24 and meetings with Mr. Myron Buttram during November, December,
25 1969, and January, February, 1970, concerning your desire

1 jkh9 Acton-cross

2 to have Mr. Myron Buttram put his equipment on the site
3 of the Lone Tree Mine?

4 A Yes, sir.

5 Q And did those conversations actually culminate
6 in your paying a sum of money to Mr. Buttram and in his
7 actually locating his equipment on the mine site?

8 A Yes, sir.

9 Q Would your best estimate of the time of the
10 location of the equipment on the mine site be some time in
11 January or February of 1970?

12 A Yes, sir.

13 Q Is that a fair statement?

14 A Yes, sir.

15 Q What would be your approximation of the amount
16 of money you were able to raise to pay to Mr. Buttram
17 in connection with his locating that equipment on the mine
18 site?

19 A In all to do with the mine, including Mr.
20 Buttram and all, probably \$100,000.

21 Q \$100,000?

22 A But I am not exact at all. I am just saying the
23 equipment we bought and paid for and put out there and
24 all this business was a considerable amount of money.

25 Q Did there ever come a time when you arranged for

jkh10

Acton-cross

1 a meeting between Buttram and Mr. Segal?

2 A Yes, sir.

3 Q And that meeting took place on or about
4 January 19, 1970, at the Los Angeles International Hotel,
5 which is at the airport, isn't that correct, sir?

6 A Yes, sir.

7 Q And you and Mr. Clegg were at the meeting and
8 you introduced Mr. Buttram to Mr. Segal, is that correct?

9 A Yes, sir.

10 Q And you asked Mr. Buttram to explain to Mr. Segal
11 how the Cully process works, is that correct?

12 A Yes, sir.

13 Q And Mr. Buttram proceeded to explain to Mr.
14 Segal how the process works for the purpose of disintegrating
15 or breaking down the ore and that he was optimistic that
16 it could work at the location of the Lone Tree site, isn't
17 that correct?

18 A Yes, sir.

19 Q And did Mr. Segal ask various questions of Mr.
20 Buttram about the technical procedures during the course
21 of that meeting?

22 A Yes, sir.

23 Q And did Mr. Buttram answer those questions?

24 A Yes, sir.

1 jkh11

Acton-cross

2 Q Thank you. Now, in fact, you believed so strongly
3 in the mine claims that even after you became inactive
4 in Pioneer Development Corporation, as you testified
5 to on direct examination, you actually moved out to the
6 mine site yourself and tried to work the mine with Mr.
7 Clegg, didn't you?

8 A Yes, sir.

9 Q You set up trailers out at the mine site?

10 A Yes, sir.

11 Q And you entered into a partnership agreement
12 with Sheldon Lamb and Mr. Clegg in connection with continuing
13 work on the mine site?

14 A Yes, sir.

15 MR. DOYLE: I am going to mark this Mr. Segal's
16 Exhibit C for identification.

17 Q I ask you if you can identify it?

18 A Yes, sir.

19 Q What is that, sir?

20 A It is an agreement that Mr. Clegg and I made
21 with Mr. Lamb to continue the operation.

22 Q On the mining claims?

23 A On the mining claims.

24 MR. DOYLE: I offer this in evidence.

25 MR. WALKER: What is the date?

jkh12

Acton-cross

Your Honor, I would object to this. It is dated April 5, 1970. The witness has said that he left Pioneer by that time. He left Pioneer March 14, 1970.

THE COURT: I heard him say that. What is your objection?

MR. WALKER: The objection is relevance.

THE COURT: Overruled.

(Defendant Segal's Exhibit C received in evidence.)

MR. DOYLE: May I read this to the jury, your Honor?

THE COURT: Does it do any more than what you brought out with the witness?

MR. DOYLE: No. I can forego it in the interests of moving the trial along, your Honor. Thank you.

Q Mr. Acton, you also believed, did you not, sir, that because Pioneer Development Corporation was a 1918 corporation and had shareholders holding shares issued prior to 1933 that those shares could be freely traded on the open market without the filing of a registration statement, isn't that correct?

A Yes, sir.

Q And in connection with your belief that the shares could be freely traded, were you also told by Mr. Hayes Schaeffer of the Nevada Agency and Trust Company, the trans for

1 jkhl3
2 agent, that shares that don't bear a legend "restricted"
3 can be freely traded?

4 A Yes, sir.

5 Q And did you rely on that conversation with Mr.
6 Schaeffer in reaching the opinion and your belief, your
7 sincere belief that the Pioneer shares could be freely
8 traded?

9 A Yes, sir.

10 Q And did Mr. Frasier, the counsel for the company,
11 ever tell you anything to the contrary?

12 A No, sir.

13 THE COURT: Did you ever ask him?

14 THE WITNESS: No, sir.

15 Q With reference to the shareholder list that
16 Mr. Walker asked you to identify on direct examination
17 yesterday, which is one of the government exhibits of which
18 I have a copy and will show you, that represents, sir, does
19 it not, the shareholders of record of Pioneer Development
20 Corporation as of May 16, 1969, is that correct?

21 A Yes, sir.

22 Q And you testified on direct examination that
23 you, together with George Aaron, Bill Casey and Michael
24 Clegg, assembled approximately 200,000 shares by acquiring
25 them from the preexisting shareholders, is that correct?

jkl14

Acton-cross

1
2 A Yes, sir.

3 Q And how much did you pay per share?

4 A It varied.

5 Q Now, that left well over 300,000 shares that
6 had not been acquired, isn't that correct?

7 A Yes, sir.

8 Q So that any one of these shareholders as
9 reflected on this list whose shares you had not acquired
10 would have been free to sell those shares in the open
11 market at any time after the stock started trading, isn't
12 that correct?

13 A Yes, sir.

14 Q Now, I want to address myself to your testimony
15 yesterday concerning a check that Mr. Segal, my client,
16 gave to you as the result of a conversation among you, my
17 client, Alan Segal and Sheldon Lamb in the amount of \$20,000.
18 You testified, if I recall, that that check was returned
19 for insufficient funds, is that correct?

20 A I presume it was insufficient. The check was
21 no good.

22 Q It was no good. All right. Do you have that
23 check, sir?

24 A No, sir.

25 Q And that check was made out to Pioneer Development

1 jkh15 Acton-cross

2 Corporation, is that your best recollection?

3 A Sir, I think so, but -- that is my best reco-
4 lection.

5 Q Where are the books and records of Pioneer
6 Development Corporation where one could look in order to
7 locate that check, do you know?

8 A No, sir.

9 Q You don't know. When was the last time you saw
10 the records of the company?

11 A Sir, this check was not deposited in Pioneer
12 Development. It was in the Lone Tree mining account, as
13 I recall.

14 Q You don't really recall who the check was made out
15 to, do you, Mr. Acton?

16 b3 A No, sir.

17 Q Now, in connection with your testimony yesterday
18 about your conversations with Mr. Segal concerning a trading
19 in Pioneer stock, you testified, if I recall, that Mr. Segal
20 said that he would endeavor to borrow money on behalf of
21 Pioneer Corporation and would remit the proceeds of the
22 borrowings of that money to you. Is that basically what
23 your testimony was yesterday?

24 A Yes, sir.

25 Q Now, you know at the time that Mr. Segal was having

1 jkh16 Acton-cross

2 financial difficulties with the Riverside Hotel, didn't
3 you?

4 A Yes, sir.

5 Q Infact, the Internal Revenue Service had placed
6 a lien on the hotel?

7 A Yes, sir.

8 Q And, in fact, yesterday you said that Mr. Segal
9 said that it would take time to borrow the money, that
10 it couldn't happen right away?

11 A Yes, sir.

12 Q You also testified that shortly after you heard
13 that the shares were being traded on the open market,
14 and I believe you said November 3rd and November 4th, 1969,
15 you endeavored to place Pioneer certificates for loans
16 by initiating, I believe it was, a conversation with Mr.
17 Scardino, is that correct?

18 A Yes, sir.

19 Q What was it -- and I believe you testified
20 yesterday on direct examination that it was the inability
21 of Mr. Segal to furnish funds to you which caused you to go
22 to Mr. Scardino to raise money on the stock; is that a
23 fair characterization of your testimony?

24 A Yes, sir.

25 Q Now, in fact, didn't you plan, Mr. Acton, to take

1 jkh17

Acton-cross

2 out the loans right away, after the stock started trading
3 in New York?

4 A Sir?

5 Q In fact, hadn't you planned and hadn't you told
6 Mr. Segal quite openly that you and Mr. Clegg planned
7 to place loans on the basis of the Pioneer stock as soon
8 as the stock started trading in New York? In other words,
9 this was a a plan that had been developed in advance and
10 discussed with Mr. Segal, and you told him that that is
11 what you were planning to do.

12 A Not that I recall immediately after starting
13 trading. We told him we would use some of our stock to
14 borrow money on, but we would not sell any of the stock.
15 I don't think we planned immediately to borrow money, no,
16 sir.

17 Q And you told Mr. Segal, didn't you, that there
18 was a group of shareholders who had purchased Pioneer
19 stock at 2.50 to \$3 a share; don't you recall saying that
20 to Mr. Segal?

21 MR. WALKER: Could I have that question read back?

22 (Question read.)

23 A I recall something about it, yes.

24 Q Something about that. And you do recall that
25 there was a group of shareholders that you and Mr. Clegg

1 jkh18

Acton-cross

2 had sold Pioneer shares to for \$2, \$2.50, \$3 a share,
3 prior to early November, 1969?

4 A Yes, sir.

5 Q Isn't that correct? About how many shares were
6 sold to those people?

7 A 20,000 approximately.

8 Q 20,000. And what were the names of the people?

9 A Ermanno Mariot.

10 Q Mr. Mariot. Anybody else?

11 A Who was Mike's father-in-law. A Morgan.

12 Q Mr. Morgan?

13 A Yes.

14 MR. WALKER: Has the witness finished his answer?

15 Q Do you have any further names?

16 A No, sir, no other.

17 Q You and Mr. Clegg told Mr. Segal that you wished
18 to have the stock, if possible, if a broker would do it,
19 open at \$5 a share because some shareholders had recently
20 purchased the stock for 2.50 or \$ a share and they would
21 be embarrassed if the stock opened at less than \$5. Didn't
22 you and Mr. Clegg say that, in substance, to Mr. Segal?

23 A I don't recall it, but if we did tell him to
24 buy at two and a half, \$3, it makes sense.

25 Q In your conversations with Mr. Segal --

1 jkh19

Acton-cross

2 MR. WALKER: Your Honor, I move to strike that
3 answer. He doesn't recall it.

4 THE COURT: Yes, strike it out; calling for
5 the operation of the witness' mind.

6 Disregard it.

7 Q In your conversations with Mr. Segal, you made
8 it very clear to him that it was your intention and your
9 plan to place loans by means of whatever Pioneer stock
10 you had retained, isn't that a fact; that you made that
11 very clear to Mr. Segal in your conversations with him
12 prior to the time that the stock opened?

13 A Yes, sir.

14 Q Prior to the time that the stock opened, do
15 you recall turning over to Mr. Segal a group of documents
16 about Pioneer Development Corporation that you have described
17 earlier consisting mainly of technical reports about the
18 mine, together with the Hatsis report about the Hughes
19 organization and whatever materials and documents had been
20 assembled in connection with the mining claim; do you
21 recall that?

22 A Yes, sir.

23 Q And do you recall a meeting at the Century
24 Plaza Hotel that Mr. Schiffman was present at, Mr. Segal's
25 attorney?

jkh20

Acton-cross

1 jkh20
2 A Yes, sir.

3 Q And do you recall turning over, either you
4 or Mr. Clegg, turning over to Mr. Schiffman and Mr. Segal
5 that file and that collection of documents at that time?

6 A Either at that time or the next meeting, yes, sir,
7 I recall.

8 Q Or the next meeting. All right. And Mr. Segal
9 or Mr. Schiffman or both men told you and Mr. Clegg that
10 they would take that file and give it to a broker in
11 New York to determine his evaluation as to whether the
12 stock could be opened at 5 or at some other price, isn't
13 that correct?

14 A They took the file to turn over to someone. I
15 don't recall as to a broker, but--

16 Q Have you seen that file since that time?

17 A Not that I recall.

18 Q The best of your recollection is that you haven't
19 seen the file since the time that you turned it over to
20 them?

21 A That is the best of my recollection.

22 Q Did you believe that you were doing anything wrong
23 in turning over the file to Mr. Segal in order for him to
24 give it to a broker in New York to open the stock at 5?

25 MR. WALKER: Objection.

jkh21

Acton-cross

THE COURT: Overruled.

Q Did you believe that you were doing anything wrong or illegal in any respect in connection with that?

A No, sir.

Q You didn't. And you didn't believe that there was anything wrong or illegal in any of the conversations that you had with Mr. Segal surrounding turning over that material to him and requesting him to open the stock at 5; isn't that correct?

MR. WALKER: Objection, your Honor. This calls for the operation of the witness' mind, a legal conclusion.

THE COURT: I think it is bad in form.

MR. DOYLE: Very well.

THE COURT: It is a compound question.

MR. DOYLE: Let me rephrase it.

Q You have told us about telling Mr. Segal that you had placed the stock or attempted to place it for loans and you have told us about a conversation or conversations with Mr. Segal about not selling the stock.

Now, with respect to those conversations, did you feel at the time that there was anything wrong in your participation in those conversations or that it was illegal in any respect?

A No, sir.

1 jkh22
2 Q Thank you. Mr. Acton, do you recall that Mr.
3 Clegg sent to the Securities and Exchange Commission a
4 financial statement of Pioneer Development Corporation?

5 A I don't know if it was ever sent or not. I remember
6 some conversation about it.

7 Q First of all, let me ask you whether Mr. Clegg
8 told you that he was going to send a financial statement
9 to the Securities and Exchange Commission. Did he or did
10 he not tell you that he was going to?

11 A Yes, sir, he said he was going to.

12 Q All right. And didn't Mr. Clegg also tell you
13 that he had contacted an accountant, a Mr. Arthur Blech,
14 who was in the process of preparing certified financial
15 statements for Pioneer?

b1 16 A Yes, sir.

17 Q And that the certified financials were not yet
18 completed, but that he would forward the Pioneer
19 Development Corporation financials to the SEC in an unaudited
20 stage in process of preparation, isn't that what Mr. Clegg
21 told you?

22 A As to whether he had sent it, I don't know.

23 Q But he said he would send it?

24 A Yes, sir.

25 Q I show you Defendant's Exhibit D for identification

1 jkh23 Acton-cross

2 and ask you if you can identify it.

3 MR. WALKER: I have it marked as a government
4 exhibit.

5 MR. DOYLE: I understand it was marked as a
6 government exhibit.

7 THE COURT: To save time, go ahead.

8 MR. DOYLE: All right.

9 Q Can you identify that, Mr. Acton?

10 A Yes, sir.

11 Q What is that, sir?

12 A It was a financial statement, a balance sheet
13 prepared January the 23rd, 1970.

14 MR. DOYLE: Your Honor, it is Government's
15 Exhibit 11 for identification and I offer it in evidence.

16 MR. WALKER: No objection.

17 THE COURT: Received.

18 (Government's Exhibit 11 received in evidence.)

19 Q Did you review this with Mr. Clegg at or about
20 the time of its preparation?

21 A Sir, I didn't hear the first part.

22 THE COURT: Did you review it with Mr. Clegg at
23 or about the time of its preparation?

24 THE WITNESS: Yes, sir.

25 Q You did. And did you approve it as being accurate

1 jkh24 Acton-cross

2 to the best of your knowledge?

3 A Yes, sir.

4 Q And is that still your position with respect
5 to this financial statement?

6 A Yes, sir.

7 Q Thank you. Now, do you recall the preparation
8 of a press release on behalf of Pioneer Development
9 Corporation?

10 A No, sir.

11 Q Pardon?

12 A No, sir.

13 Q You do not. All right.

14 MR. DOYLE: Let me have a defense Exhibit E marked
15 for identification.

16 Q I am going to show you this, Mr. Acton, and
17 ask you if this document refreshes your recollection about
18 whether there was a press release of Pioneer Development
19 Corporation.

20 MR. DOYLE: Your Honor, that was given to me by
21 the government so I am sure they have a copy.

22 THE COURT: Does it have a date? It might help
23 the witness.

24 MR. DOYLE: It is dated February 24, 1970, your
25 Honor.

jkh25

Acton-cross

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A Sir, I don't remember this at all.

Q You don't remember this at all?

A No, sir, but I am not denying it.

Q You are not denying it. You just don't recall whether or not there was a press release, is that your testimony?

A Yes, I don't.

Q In fact, your recollection about all these events is really very hazy, isn't it?

A Some of them, especially that. I don't remember that at all, sir.

Q Do you recall a shareholder's letter of Pioneer Development Corporation that was --

MR. DOYLE: Let me withdraw that question.

Q Do you recall the preparation of any letters to shareholders of Pioneer Development Corporation during the time that you were associated with the company?

A Yes, sir, one.

Q All right. And about when was that letter written?

A In about April.

Q In about April of 1970. And are you familiar with that letter?

A No, about April of 1969.

Q About April of 1969?

jkh26

Acton-cross

1 jkh26
2 A Yes, sir.

3 MR. DOYLE: Your Honor, may we have that letter
4 produced, please?

5 MR. WALKER: April, '69?

6 Your Honor, I will look for it if we have it.

7 THE WITNESS Excuse me, but it was introduced
8 as a government exhibit.

9 MR. WALKER: It is a government exhibit.

10 MR. DOYLE: May I see it, please?

11 I don't have a copy with me.

12 Q Mr. Acton, let me show you what I will mark as
13 Defendant Segal's Exhibit F for identification, which is
14 the shareholder's letter dated April 1st, 1970, and simply
15 ask you whether that might not be the document that you
16 are thinking of?

17 A This is not the document I am thinking of. The
18 one I am think of we called our first shareholders' meeting.
19 That is the only one that I recall.

20 Q Oh, you are talking about the notice to shareholders
21 about the meeting which was offered as a government exhibit
22 and received in evidence.

23 A Yes.

24 Q My question was, was any shareholder's letter that
25 you know of written to the shareholders of Pioneer

jkh27

Acton-cross

192

1 Development Corporation after April 1, 1969, and before
2 April 1, 1970?

3
4 A No, sir.

5 MR. DOYLE: May I have one moment, your Honor,
6 to look something up?

7 THE COURT: Surely.

8 (Pause)

9 Q Mr. Acton, do you recall -- first of all, let
10 me ask, you have had numerous conferences and conversations
11 with Mr. Walker, the Assistant United States Attorney who
12 has prepared this case for the government, haven't you?

13 A Yes, sir.

14 Q In fact, you have been up in the courtroom at
15 least on one occasion actually going over the testimony
16 that you would give, haven't you?

17 A Yes, sir.

18 Q And Mr. Walker has, in fact --

19 MR. WALKER: Just for the record, I would like to
20 say it wasn't exactly this courtroom. It was a courtroom.

21 MR. DOYLE: I understand. Very well.

22 Q Your recollection of these events is still very
23 hazy and much of your knowledge of the events comes from what
24 Mr. Walker has said to you about the events, isn't that
25 correct?

jkh28

Acton-cross

MR. WALKER: Objection to form.

THE COURT: Sustained.

Q Mr. Walker has refreshed your recollection about many of the facts that you have testified about here on the witness stand, isn't that true?

A Yes, sir.

Q And you were not called by the SEC to testify in 1970 or 1971 when your recollection would have been much better, were you?

A No, sir.

Q Now I am going to direct your attention to a conference that you had with Mr. Walker on November 15, 1973.

Do you recall being in Mr. Walker's office on or about that date, November 15, 1973, which is last fall, a little bit more than a year ago?

A Yes, sir.

Q Do you recall making a statement to Mr. Walker to the effect that --

MR. WALKER: What document?

MR. DOYLE: 3501.

Q -- in the context of a discussion about the subject matter that you testified yesterday, when you testified that as a result of the conversation with Mr. Segal there was an effort to persuade shareholders not to sell, do you recall telling Mr. Walker that you put out a stockholders letter afterwards to that effect? Do you recall making that statement?

Do you understand the question?

A I understand the question.

Q Is your answer that you don't recall whether or not you made that statement to Mr. Walker?

A I don't recall putting out the letter.

Q You don't recall putting out the letter?

1
2 A No, sir.

3 Q Let me ask you with respect to the question of
4 whether or not you told Mr. Walker you put out a letter,
5 Government's Exhibit 3501 for identification, does that
6 refresh your recollection in that connection?

7 MR. WALKER: Your Honor, could we have a state-
8 ment to the jury about this 3500 material, the fact that
9 it was turned over by the Govenrment?

10 THE COURT: This is material turned over by the
11 Government to the defense to show whether or not at some
12 other time the witness made an inconsistent statement.

13 A No.

14 Q Does that refresh your recollection, sir, whether
15 you told Mr. Walker such a shareholders letter had been
16 sent?

17 A The way I read this --

18 THE COURT: Tell us whether it refreshes your
19 recollection.

20 Q Just tell us whether it refreshes your recol-
21 lection?

22 A Yes, sir, it refreshes my recollection.

23 Q And you do remember saying to Mr. Walker that
24 there was a shareholders letter?

25 A This doesn't say that it was.

MS3

Acton-cross

THE COURT: Nobody asked you what it says.

Does it help you remember?

THE WITNESS: Yes, sir, it helps me remember.

THE COURT: What does it help you remember?

THE WITNESS: That we said we would put out one.

Whether we did put out one I don't know.

Q Directing your attention to Government's Exhibit 3502 at page 8, and, first of all, referring to the date of November 15, 1973, which is the same date as the meeting with Mr. Walker that I referred to in my prior series of questioning, in referring to page 8 of 3502 for identification I ask you whether the underlined material in this document refreshes your recollection that what you said to Mr. Walker was that a stockholders letter had been sent?

A Yes, sir, it says it had been.

Q Do you now remember telling Mr. Walker that a stockholders letter was sent?

A Yes, sir.

Q You do remember telling Mr. Walker that?

A Yes, sir.

Q Is that your present recollection, that a stockholders letter was sent?

A Sir, I don't recall whether one was sent or not.

1 ms4
2 Q At this time you just don't recall one way or
3 the other?

4 A No, sir.

5 Q Directing your attention to Mr. Sheldon Lamb
6 and to your testimony about Mr. Segal's \$20,000 check, at
7 or about the same time that Mr. Segal furnished the check
8 is it not also a fact that M.r Segal took Mr. Lamb with you
9 to a bank in Boston to try to help Mr. Lamb borrow some
10 money form that bank?

11 A Yes, sir.

12 Q Was that effort successful?

13 A No, sir.

14 Q Mr. Segal, is it not a fact, introduced Mr. Lamb
15 to the banker on that occasion?

16 A Yes, sir.

17 Q Was the purpose to get a loan for the Lone Tree
18 Mining claim or was it for Mr. Lamb's ranching activities
19 or both?

20 A As I recall, both.

21 Q You recall testifying yesterday about an indebted
22 ness of Pioneer to American Aluminum & Steel Corporation.
23 Do you recall Mr. Walking asking you whether one of the
24 assets of Pioneer was an account receivable from American
25 Aluminum & Steel Corporation?

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2

A To Pioneer.

3

Q You remember testifying to that yesterday?

4

A Yes, sir.

5

Q Mr. Walker asked you whether a lawsuit had been

6

brought and you said it had not been brought?

7

A Yes, sir.

8

Q In fact, moneys had been advanced by Pioneer to

9

American Aluminum Corporation?

10

A Yes, sir.

11

Q I show you Defendant Segal's Exhibit G for

12

identification and ask you if you can identify this, this

13

being a group of checks?

14

A Yes, sir.

15

Q Are those the checks representing moneys advanced

16

by Pioneer Development Corporation to American Aluminum &

17

Steel?

18

A Yes, sir.

19

Q Are these the advances that are represented

20

by the indebtedness that you testified about yesterday?

21

A Yes, sir.

22

MR. DOYLE: I offer them in evidence.

23

MR. WALKER: No objection.

24

THE COURT: Received.

25

(Defendant Segal's Exhibit G was received in

1
2 evidence.)

3 Q With respect to that claim did Mr. Frasier
4 ever tell you that he intended to sue to collect that claim
5 from American Aluminum & Steel Corporation? Do you recall
6 whether he did or not?

7 A He discussed it at the time that Mr. Lewis was
8 still involved with American Aluminum & Steel. He was
9 representing Mr. Lewis. He said he would bring someone
10 else in.

11 Q He wanted to bring someone else in to bring
12 the action?

13 A Yes, sir.

14 Q Do you recall any further conversations with
15 Mr. Fraiser concerning whether an action had been begun or
16 brought?

17 A No, sir.

18 Q Going back to Mr. Segal's undertaking to attempt
19 to raise financing for Pioneer Development Corporation, you
20 tried to help Mr. Segal with respect to his attempt to get
21 out of his problems with the Riverside Hotel, didn't you?

22 A Mr. Scardino tried to help him.

23 Q What about you, Mr. Acton? Didn't you?
24 For instance, didn't you introduce Mr. Segal to Mr. Jacobs
25 or Mr. Jacobson, who had been a possible buyer for Mr.

1 Segal's interest in the Riverside Hotel?

2 MR. WALKER: Objection. This is irrelevant.

3 THE COURT: Overruled.

4 A Mr. Jacobs or Jacobson?

5 Q You don't recall that?

6 A No.

7 Q But you do recall that Mr. Segal was attempting
8 to sell his interest in the Riverside Hotel at or about
9 the same time that the opening of the stock of Pioneer
10 occurred and the events into January and February, 1970?
11 You do recall that fact?

12 A Yes, sir.

13 MR. WALKER: Objection. I think it's irrele-
14 vant.

15 THE COURT: Overruled.

16 Q Do you recall being told by Mr. Segal on various
17 occasions that he was unable or unsuccessful in selling his
18 interest in the Riverside Hotel?

19 A Yes, sir.

20 Q In fact, what was contemplated, was it not, that
21 Mr. Segal would help Pioneer Development Corporation from
22 the proceeds of the sale of his interest in the Riverside
23 Hotel if he was successful in selling it? Wasn't that
24 the understanding?
25

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2 MR. WALKER: Objection.

3 A I don't recall that.

4 Q You don't recall that?

5 A No.

6 Q Do you recall asking Mr. Segal for any loans
7 prior to the Pioneer Development Corporation conversation?

8 THE COURT: Loans of what? To Pioneer or
9 personally?

10 MR. DOYLE: Any types of loans or any financing
11 prior to Pioneer.

12 A No, sir.

13 Q Do you recall the United Greenwater Copper
14 Corporation?

15 A Yes, sir.

16 Q Do you recall asking Mr. Segal if he would
17 be interested in obtaining financing for that corpora-
18 tion?

19 A No, sir.

20 Q You don't recall that?

21 A No.

22 Q Were you familiar with that corporation prior
23 to Pioneer Development Corporation?

24 A Yes, sir, but not real familiar. I just knew
25 about it.

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Q You don't recall conversations with Mr. Segal about it?

A No, sir.

Q By the way, did Mr. Schiffman ever tell you that there would be anything illegal or improper about the trading of the Pioneer stock at any time during your meeting with Mr. Schiffman in Los Angeles?

MR. WALKER: Objection. Can we have a specific conversation?

THE COURT: Sustained.

Q Referring to your testimony yesterday on direct examination of a meeting at the Century Plaza Hotel with a group of persons that included Mr. Schiffman -- this, I believe, was the third meeting when Mr. Walker, Mr. Jay Walker was present and Mr. Segal and Mr. Schiffman -- was that your only meeting with Mr. Schiffman?

A The only one that I recall.

Q The only one that you recall? Did he say anything at that time at that meeting that there would be anything illegal or improper about the trading of the Pioneer shares without a registration statement being obtained?

MR. WALKER: Objection.

THE COURT: Sustained.

1 Q Tell us what you remember of what Mr. Schiffman
2 said on that occasion?

3 A I don't remember Mr. Schiffman saying much of
4 anything.

5 THE COURT: Of course, you may lead. You are
6 on cross-examination.

7 MR. DOYLE: Yes, I understand, your Honor.

8 Q Basically, Mr. Acton, you just don't remember
9 what Mr. Schiffman said, if he said anything on that
10 occasion? Is that a fair statement?

11 A Yes, sir.

12 Q You were aware, were you not, that Mr. Segal
13 made some payments for the shares in Pioneer Development
14 Corporation that he received, weren't you?

15 A No, sir.

16 Q Didn't you know that he paid \$5000 to George
17 Aaron in compensation for the shares that Mr. Segal
18 received at Pioneer Development Corporation?

19 A No, sir.

20 Q You did not know that?

21 A No, sir.

22 THE COURT: I want to say to the jury at this
23 point, counsel's questions are not evidence, unless the
24 witness agrees in the assumption in the question, or the
25

1 facts stated in the question.

2
3 Q Do you recall any conversations, either with
4 Mr. Aaron or Mr. Segal, concerning the payment of \$5000 by
5 Mr. Segal to Mr. Aaron for Pioneer shares?

6 A No, sir, I don't recall that.

7 Q Let me show you what I have marked as Defendant
8 Segal's Exhibit H for identification and ask you if this
9 refreshes your recollection about any such conversation?

10 A I see it, but I do not remember it.

11 Q Do you recall that Mr. Segal wired funds to a
12 Mr. Sisson, an attorney for one of the prior shareholders
13 of Pioneer Development Corporation? Do you have any
14 recollection of that?

15 A No, sir, I don't.

16 Q Now, during 1969, the fall of 1969 and early
17 1970, you had various telephone conversations with Mr.
18 Segal from time to time when you kept him up to date with
19 the efforts that you were working to raise financing for
20 Pioneer, didn't you?

21 A Yes, sir.

22 Q You told him about the practice that you were
23 having with Mr. Buttram in raising money for Mr. Buttram
24 to put his equipment at the mine site?

25 MR. WALKER: Can we have a time and place?

1
2 MR. DOYLE: I'm referring to really a series
3 of telephone conversations.

4 THE COURT: See if you can fix the time.

5 Q Let me ask you whether in November, 1969, you
6 had any telephone conversations with Alan Segal where you
7 were in Los Angeles and he in New York, at which time you
8 brought him up to date on the status of Pioneer Development
9 Corporation and its acquisitions in the mine?

10 A I don't recall. Most of the conversations
11 Mr. Clegg had. I had a lot of conversations with Mr.
12 Clegg and Mr. Clegg talked to Mr. Segal most of the time.

13 Q They were telephone conversations?

14 A Yes.

15 Q Did Mr. Clegg report back to you what he had
16 said to Mr. Segal?

17 A Yes.

18 Q And reported to you what Mr. Segal had said
19 to him?

20 A Yes.

21 Q Do you recall that Mr. Clegg told you that he
22 had mentioned to Mr. Segal that there were mercury brokers
23 who would advance 5 per cent down payment on the production
24 of the mining claims?

25 Do you recall that conversation?

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MR. WALKER: Can we have the time?

3

MR. DOYLE: Again in November, 1969.

4

MR. WALKER: When in November?

5

A No, sir, I don't recall.

6

Q You don't recall it?

7

A No, sir.

8

Q Mr. Walker directed your attention on a number

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of occasions to the fact that there was no commercial

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production from the mining claims, that, in fact, various

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amounts of ore were extracted for exploration purposes

12

and for the purposes of testing? Is that right?

13

A Yes, sir.

14

Q They, in fact, were tested? Isn't that true?

15

A Yes, sir.

16

Q And the assay reports were included in the

17

group of materials that was given to Mr. Segal and Schiffman,

18

that they were to take it to a broker in New York? Isn't

19

that correct?

20

A Yes, sir.

21

Q You testified that you pleaded guilty in this

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case, Mr. Acton, but the fact is that you really don't feel

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this time that you did anything wrong in connection with

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your activities in connection with Pioneer Development

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Corporation?

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MR. WALKER: Objection.

THE COURT: Sustained.

Q Again directing your attention to November, 1969, I want to go back to one point to make sure we have this clear, is it a fair statement that your decision to go and borrow money on the Pioneer shares was a decision based on a plan that You had previously developed and not caused by the fact that Mr. Segal had not produced financing at that time?

Do you understand that question?

A That wasn't the reason we borrowed the money at the time, preconceived plans.

Q Put it in your words?

A We borrowed the money because we needed it at that time for the company.

Q And the stock had opened in New York only a few days earlier? Isn't that correct?

A Yes.

Q That was only a few days after you had given the stock to Mr. Segal.

A Yes, sir.

Q So you knew about a week before or ten days before that you needed money? You knew that just as clearly then as you did a few days after the stock opened?

1 THE COURT: You say "you." Do you mean
2 Pioneer?

3 Q When I say "you," you and Mr. Clegg? You were
4 running the company, you and Mr. Clegg?

5 A Yes.

6 Q So when I say "you knew," or "you did," you can
7 take it that you or Mr. Clegg. If there is something
8 Mr. Clegg knew or did that was different from what you knew
9 or did, tell us about that.

10 You knew there was a need for financing and a
11 need for borrowing at the time you gave this stock to Mr.
12 Clegg? You knew it just as well then?

13 A Not as well, because the check had not been
14 returned.

15 Q I am going to show you a document -- I am going
16 to show you two documents that I will mark I and J for
17 identification. I will give copies to Mr. Walker and
18 to Mr. Siffert, and I will show the originals.

19 Now I direct your attention to these. These
20 are bank documents. I am going to ask you to look at
21 them closely. I have a question to ask you after you have
22 finished looking at them.

23 Do you understand what these documents are?

24 A They are charges for the check.
25

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2 Q They are debit advices because of a check being
3 returned for insufficient funds?

4 A Yes.

5 Q The check is in the amount of \$20,000?

6 A Yes.

7 Q And it is to the order of Pioneer Development
8 Corporation?

9 A Yes.

10 Q That is the check of Alan Segal that you
11 referred to on direct examination?

12 A Yes.

13 Q And the date of the advice is November 1/th?

14 A Yes, it is.

15 Q And that is about two weeks after the time that
16 you testified you decided to go and place loans on the
17 stock? Isn't that correct?

18 A Yes, sir.

19 Q Doesn't that refresh your recollection that
20 Mr. Segal's bounced check had nothing whatsoever to do with
21 your plan to borrow money for Pioneer on the stock?

22 A Sir, we put those checks in many, many times.
23 So I don't know which one this is. We sent the check
24 for collection for weeks and weeks.

25 Q How much money did you feel had to be raised in

1
2 order to exploit the mine?

3 A To put the mine in full operation?

4 Q Yes.

5 A Probably half a million dollars.

6 Q So that a \$20,000 item one way or the other would
7 be relatively immaterial in comparison with the overall need
8 for financing of Pioneer? Isn't that correct?

9 A Overall need, yes, sir, but to keep the thing
10 in operation was very important.

11 Q Whether this check cleared or didn't clear, you
12 had a plan in mind at the time you gave Mr. Segal the
13 stock that you executed shortly thereafter to use the
14 stock that you had to borrow money for Pioneer? Isn't
15 that clear, Mr. Acton?

16 A Not that I recall it perfectly clear, but, yes,
17 sir, we were trying to borrow money.

18 Q Whether this check bounced or didn't bounce in
19 the overall picture really had nothing to do with the
20 question here? You were trying to raise the money, and
21 this is the way you were trying to raise the money?
22 You told Mr. Segal you were going to use the shares to
23 borrow money against?

24 A Yes, sir.

25 MR. DOYLE: Your Honor, I offer these in evidence

1
2 MR. WALKER: May I ask a few questions on the
3 voir dire, your Honor?

4 VOIR DIRE EXAMINATION

5 BY MR. WALKER:

6 Q First of all, did you prepare any of these
7 documents?

8 A No, sir.

9 Q Have you ever seen these before?

10 A No, sir.

11 MR. DOYLE: If there is a competency objection
12 I will withdraw it and call a witness. I will withdraw
13 the exhibit, your Honor, so I don't see any point to this.
14 I don't see any point in pursuing it with this witness.

15 BY MR. DOYLE:

16 Q At the time You and Mr. Clegg acquired the
17 shares, you were acquiring shares at 25 cents apiece from
18 preexisting shareholders, and that was also during the
19 period that Mr. Mariot and the others that you referred
20 to paid \$2.50 and \$3.00 a share for the Pioneer stock?

21 MR. WALKER: Objection as assuming facts not in
22 evidence.

23 THE COURT: Overruled.

24 Do you understand the question? While you
25 were paying a quarter and others were paying \$2.50 and

\$3.00.

THE WITNESS: Yes, sir.

Q Did you tell Mr. Mariot, who was paying \$2.50 a share, that you were paying a quarter a share to others? Did you tell him that?

A I don't know. Mr. Mariot is Mr. Clegg's father-in-law. He was dealing with him.

Q Mr. Meariot was Mr. Clegg's father-in-law and he paid \$2.50 a share? Is that your best understanding of these events?

A My understanding, yes, sir.

MR. DOYLE: No further questions, your Honor.

MR. KIRSCHNER: Your Honor, I anticipate about an hour.

THE COURT: I can't imagine why, but if you do, use as much as you can now.

MR. KIRSCHNER: Thank you, your Honor.

CROSS EXAMINATION

BY MR. KIRSCHNER:

Q My name is Richard Kirschner and I represent Mr. Zuber.

First of all, let me ask you this, sir:

These events that you testified to occurred approximately five years ago?

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A Yes, sir.

Q Isn't it a fact that your recollection of those events is quite hazy?

A Yes, sir.

Q When your conversations with Mr. I y Lewis occurred in late 1968 with regard to the acquisition of Pioneer Development, was Mr. Zuber present?

Do you understand my question?

A I think the time is wrong.

Q '69?

A '68, no.

THE COURT: Was Zuber there?

THE WITNESS: No.

Q Did you ever discuss that with Mr. Zuber?

A No, sir.

Q Sir, when you obtained control of the books and records of Pioneer in Arizona, when you went down there to obtain those books and records, was Mr. Zuber with you?

A No, sir.

Q Did you ever discuss that with Mr. Zuber?

A No, sir.

Q When you engaged In your conversation with Mr. George Aaron and Mr. Casey concerning the acquisition of the outstanding stock of Pioneer, was Mr. Zuber present?

1
2 A No, sir.

3 Q Did you ever have occasion to discuss that with
4 Mr. Zuber?

5 A No, sir.

6 MR. WALKER: I object to this. I think that
7 the evidence is clear that this witness has testified that
8 Zuber came into the picture after Christmas.

9 THE COURT: Sustained. There is no evidence
10 of any time before, and there is no claim, and no reason
11 for wasting this time because he has not testified to that.

12 MR. KIRSCHNER: Is the Government willing to
13 stipulate that Mr. Zuber was not present?

14 THE COURT: No such stipulation is called for.
15 Don't ask for it in open court. It is not the way we do
16 things here. I sustain the objection.

17 MR. KIRSCHNER: It is my intention to ask
18 a number of questions.

19 THE COURT: Ask them and I will rule on them.

20 Q You contacted a number of shareholders concerning
21 the acquisition of their outstanding stock? Is that
22 correct?

23 A Yes, sir.

24 Q Did you ever discuss that fact with Mr. Zuber?

25 A No, sir.

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MR. WALKER: Objection.

THE COURT: Sustained.

Q When you engaged in conversations with Mr. Sheldon Lamb concerning the acquisition of Mercury Mining claims did you discuss that conversation with Mr. Zuber at any time?

MR. WALKER: Objection.

THE COURT: Sustained.

Q When you engaged in your conversations with Mr. Scardino did you ever tell Mr. Zuber about those conversations?

A No, sir.

Q When you engaged in your conversations with Mr. Segal, any conversations, did you ever tell Mr. Zuber about those conversations?

A No, sir.

Q When you gave Mr. McKibbon and Mr. Scardino the block of stock for the purposes of a loan, did you tell Mr. Zuber about that?

A No, sir.

Q When you gave Mr. Segal the stock which you testified that you had given him, did you tell Mr. Zuber about that?

A No, sir.

MR. WALKER: Objection.

Q Directing your attention to your first meeting with Mr. Zuber, that occurred in late December of 1969? Is that correct?

A Yes, sir.

Q When Mr. Zuber came to your house in Los Angeles did he introduce himself as Eddie Zuber?

A I don't recall.

Q You knew who he was, though?

A Yes, sir.

Q Did Mr. Zuber call you before he came over? Do you recall that?

A I don't think so. I don't recall.

Q Isn't it a fact that when Mr. Zuber came to your house he said that he wanted you to go to Reno to help him straighten out the payment for the stock?

A I don't recall it that way. He said we were going to a meeting to straighten out the stock.

Q When you left your home to proceed to Reno with Mr. Zuber you went voluntarily, didn't you?

A Yes, sir.

Q With respect to the stock that had been given to Mr. Scardino, it was supposed to be used as collateral for a loan? Is that correct?

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A Yes, sir.

Q And the money for this loan was going to be used to develop the mining claims? Is that correct?

A Yes, sir.

Q Isn't it a fact that Mr. McKibbon used this stock for a loan?

A Yes, sir.

Q Isn't it a fact that Mr. McKibbon had actually sold the stock and stolen the proceeds?

A Yes, sir.

MR. WALKER: Your Honor, could we have a clarification as to the basis of this witness' knowledge of that fact?

MR. KIRSCHNER: This is cross-examination, your Honor.

THE COURT: I'm quite aware of it.

MR. WALKER: I ask that the answer be stricken as conclusory.

THE COURT: Sustained.

Q Sir, isn't it a fact that at this meeting in Reno at the Holiday Inn Mr. McKibbon lied and stated that he had not sold the stock?

A Yes, sir.

MR. WALKER: Objection as to form, and I ask

1
2 that the answer be stricken.

3 THE COURT: Strike it.

4 Q During the course of this meeting at the Holiday
5 Inn in Reno did Mr. McKibbon state that he had not sold
6 the stock?

7 A Yes, sir.

8 Q Was that untrue?

9 MR. WALKER: Objection.

10 THE COURT: Sustained.

11 Do you know whether he had sold it or not?
12 Do you know of your own knowledge whether he had sold it?

13 THE WITNESS: Yes, he had sold it.

14 Q At this meeting Mr. Zuber told Mr. McKibbon
15 that he wanted the money from that stock?

16 A Yes, sir.

17 Q Isn't it a fact that Mr. McKibbon had lied to
18 Mr. Zuber about what he had done with the stock?

19 MR. WALKER: Objection.

20 THE COURT: Sustained.

21 Q What did Mr. McKibbon say to Mr. Zuber that he
22 had done with the stock?

23 A I don't recall that he said anything.

24 Q Will you try and recreate as best you can what
25 occurred? Tell who said what?

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A Well, Mr. Zuber said, "You have sold the stock."

Q Did Mr. McKibbon deny that?

A He denied that he had sold the stock.

Q Go ahead?

A Mr. Zuber was very loud and --

THE COURT: What did he say, not that he was very loud. Whad did he say?

THE WITNESS: He said, "You're lying. You did sell the stock." And there was a loud argument.

THE COURT: What did Mr. McKibbon say?

THE WITNESS: He said he did not. Mr. Zuber then struck him or hit him.

Q Did he grab --

A Grabbed him or hit him.

Q Was there actually an altercation with blows being swung? Or was it just a conversation where he grabbed him?

A I think he choked him.

Q After this tussle did Mr. McKibbon admit that he had sold the stock?

A Yes.

Q At that point did Mr. McKibbon state that he would repay the money for the stock?

A Yes.

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Q Who was present at this meeting?

A Mr. Howard, Mr. Zuber, myself, Mr. Scardino,
Mr. McKibbon

Q There were guns displayed in this meeting?

A Not that I saw.

Q At any time did Mr. Zuber actually threaten you?

A No, sir.

Q Isn't it a fact that Mr. McKibbon just prior to
this meeting, or to your knowledge do you know whether Mr.
McKibbon prior to this meeting had arranged to have some
protection brought in for his benefit?

A I understand he did, yes, sir.

Q Was that Mr. Glazier's function at the meeting,
to protect Mr. McKibbon?

A Yes, sir.

Q The purpose of this trip to Reno was to find out
who sold the stock and get the money returned? Is that
correct?

A Yes, sir.

Q Isn't it a fact that when you and Mr. Zuber
went to Reno you both had the same interest, and that
interest was to get the money back?

A Yes, sir.

Q Sir, after this trip to Reno you visited Mr.

1 ms
2 Zuber's home, didn't you?

3 A Yes.

4 Q He introduced you to his wife?

5 A Yes, sir.

6 Q To his children?

7 MR. WALKER: Can we have a time on this?

8 THE COURT: Fix the time.

9 Q Can you tell us roughly when this was?

10 A Within several days coming back from Reno, right
11 after the 1st of the year, the first week of 1970.

12 Q You engaged in a friendly conversation with him?

13 A Yes.

14 Q In short, you were not afraid of Mr. Zuber, were
15 you, at this time?

16 A No.

17 MR. WALKER: What time are we talking about?

18 MR. KIRSCHNER: The time of the meeting.

19 Q You are referring to the time you went to Mr.
20 Zuber's house?

21 A Yes, sir.

22 Q That is when I am referring to.

23 Directing your attention to January,
24 1969, it was your stock that was traded to Mr. Grant, was it
25 not, for fur coats?

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A Yes, sir.

Q And you were present with Mr. Zuber and Mr. Howard when the trade was discussed with Mr. Grant?

A Yes, sir.

Q Do you recall what was said?

A Just that we were trading stock for fur coats.

Q Now, that was the only time that Mr. Zuber was present with you in New York, is that right, was at this meeting with Mr. Grant?

A The only time I recall.

Q Isn't it a fact that Mr. Zuber put you in touch with Mr. Grand for the purpose of you giving stock to Mr. Grant in exchange for some perfumes?

A Yes, sir, I presume.

Q Isn't it a fact that you did not pay Mr. Zuber anything for this?

A Yes, sir.

Q Isn't it a fact that Mr. Grant was supposed to give Mr. Zuber a fur coat or two for arranging this?

A Some arrangement. I don't know.

Q Now, sir, I would like to direct your attention to the requirement for a registration statement for the stock.

Was it your belief that a registration statement

1
2 was unnecessary for the Pioneer stock during the course
3 of the time you were trading with him?

4 MR. WALKER: Objection.

5 THE COURT: Overruled.

6 A Yes.

7 Q What did you base that belief on?

8 THE COURT: I will sustain the objection.

9 That is something already brought out by Mr. Doyle in which
10 the witness has said what his belief was.

11 Q With respect to the mining claims, you have
12 indicated that you thought the mining claims were very
13 valuable? Is that right?

14 A Yes, sir.

15 Q And that the Hughes Corporation was interested in
16 purchasing those claims?

17 A I heard that.

18 Q The figure was 5 or 10 million dollars?

19 A Big figures, yes, sir.

20 Q You had observed an assay report?

21 A Yes, sir.

22 Q Do you recall what equipment was purchased to
23 help you put the mine in operation?

24 A A lot of equipment, sir.

25 Q Do you know where title is --

1 ms
2 MR. WALKER: Objection, sir. This is repeti-
3 tive.

4 THE COURT: Sustained.

5 Q After the mining claims were acquired you moved
6 your wife and your family to the mining site, did you not?

7 MR. WALKER: Objection.

8 THE COURT: Sustained.

9 Q Did you tell Mr. Zuber that you believed the
10 mine was very valuable?

11 A Yes, sir.

12 Q Did you give him all the background on the mine?

13 A Yes, ir.

14 MR. WALKER: Objection. This is a conclusion.
15 Objection as to form.

16 THE COURT: You can put it in a leading question,
17 if you want.

5 18 Q Did you have a conversation with Mr. Zuber at
19 any time to the effect that the mine was a valuable
20 asset?

21 A Yes, sir.

22 Q Did this conversation occur in December or
23 January of 1969?

24 A January, yes, sir. January, 1970.

25 Q December '69 -- January '70?

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A Yes, sir.

Q Did you tell Mr. Zuber all the things that you testified to on cross-examination about why you felt the mine was valuable?

A Yes, sir.

THE COURT: Would this be a convenient place to stop?

MR. KIRSCHNER: Yes.

THE COURT: We will take our luncheon recess.

Don't talk about the case; don't let anybody talk to you about it. Remember my instructions about that. 2.15. Please try to be on time.

(Luncheon recess.)

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AFTERNOON SESSION

2:15 P.M.

B U R N E Y A C T O N, resumed.

MR. SIFFERT: Your Honor, we would like to call a witness out of turn, if that is possible. He has a plane to catch at 5 o'clock.

MR. WALKER: A very short witness.

THE COURT: All right, you may step down.

(Witness temporarily excused)

MR. APE: Your Honor, I would object to that.

THE COURT: Your objection is noted. Overruled.

(Jury present.)

MR. SIFFERT: The government calls --

THE COURT: We are going to take a witness out of turn.

All right.

MR. SIFFERT: The government calls Ronald Brookins.

R O N A L D R . B R O O K I N S, called as a witness

by the government, having been duly sworn, testified as follows:

D I R E C T E X A M I N A T I O N

B Y M R . S I F F E R T :

Q M . Brookins, during the years 1968 to 1970 how

1 jkh2 - Brookins -direct

2 were you employed?

3 A I was the operations manager for Hornblower
4 Weeks Hemphill & Noyes, Denver, Colorado.

5 Q And in the course of your duties as operations
6 manager, were you familiar with the books and records of
7 Hornblower & Weeks?

8 A Yes.

9 Q I show you Government's Exhibits 20-A, 20-C
10 and 20-D for identification and ask if you can identify
11 them.

12 A These are microfilm copies of these statements
13 of -- this one is George Parris.

14 Q What number is that? Is that 20-A?

15 A Yes, 20-A. This indicates the --

16 THE COURT: Don't tell us what it indicates.
17 Are those records kept in the regular course of business
18 of Hornblower Weeks & Company?

19 THE WITNESS: Yes, sir.

20 THE COURT: And is it part of your regular business
21 to keep those records?

22 THE WITNESS: Yes.

23 MR. SIFFERT: I offer them in evidence, your Honor.

24 Are they received?

25 I have offered them.

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Brookins -direct

THE COURT: Any objection? Do you have copies?

MR. GREENBERG: We do.

MR. PAPE: No objection.

THE COURT: Received.

(Government's Exhibits 20-A, 20-C and 20-D

received in evidence.)

Q Directing your attention to the Parris statement, that is Government's Exhibit 20-A, on the date 11/14 was there an entry?

THE COURT: Mr. Siffert, it is in evidence. You may read from it.

MR. SIFFERT: Okay.

Q On 11/14 in the second column, there is an indication of sold or delivered, 400. Mr. Brookins, what does that indicate about 400? Does that mean number of shares?

A Yes, sir, number of shares sold.

Q And in the next column it says Pioneer Development A/O 11/7. What does A/O mean?

A The A/O is the date that the trade transpired.

Q Is that the trade date rather than the settlement date?

A Yes, sir.

Q What does the settlement date mean?

1 jkh1 Brookins-direct

2 A The settlement date occurs five days after the
3 trade date, for the customer can either deliver the stock
4 or before he gets payment.

5 Q That is five business days?

6 A Yes, sir, five business days.

7 Q Now, for all the shares traded as of 11/7, what
8 is the total number of shares traded?

9 A 5,000.

10 Q Does 20-A reflect that on 11/12/69 a check was
11 issued in the amount of \$36,459.53?

12 A Yes, sir.

13 Q Turning your attention as to Government's
14 Exhibit 20-C, which is the Scardino statement, I ask how
15 much shares of stock were sold in the month of November?

16 A 6,000.

17 Q And on the entry for 11/18/69, does the check
18 that is issued reflect the amount of \$30,441, the first
19 entry on top?

20 A Yes.

21 Q And on 11/28, does it reflect further that another
22 check was issued in the amount of \$16,347.25?

23 A Yes.

24 Q And what would those checks have been issued for?

25 A For the sale of the 6,000 shares of Pioneer

1 jkh5 Brookins-direct
2 Development stock.

3 Q Turning your attention to Government Exhibit
4 20-D, the McKibbon statement, I ask if you can calculate
5 the total number of shares sold between 12/22 and 1/14,
6 that is, 12/22, '69, and 1/14/70.

7 A 13,900.

8 Q And does it reflect that 18,000 shares were de-
9 posited in the account of Mr. McKibbon?

10 A Yes.

11 Q That left how many shares unsold in his account?

12 A 4,100.

13 Q And is that reflected somewhere on the statement
14 of McKibbon?

15 A On the January statement, the last entry, 1/27/70,
16 it shows 4,100 shares delivered off the account.

17 Q Now, still dealing with Mr. McKibbon's statement,
18 20-D for identification, on the date 1/5/70, was a check
19 issued in the amount of \$21,713?

20 A Yes.

21 Q And on 12/16/69 was a check issued in the amount
22 of \$79,150?

23 A Yes.

24 Q With respect to all, 20-A, C and D, where were
25 the trades originated from in each of the cases?

1 jkh6 Brookins-direct

2 A Denver, Colorado.

3 Q How can you tell that?

4 A Where it has the account number, the account.

5 Q The upper right?

6 A The upper right-hand corner, the 67 designates
7 that that was the Denver office.

8 Q Do you know what the practice of Hornblower
9 Weeks Hemphill & Noyes was with respect to interstate wire
10 transmissions on sale of over-the-counter stock that
11 originated from Denver to other brokerage houses in other
12 states?

13 A The broker, after having made contact with the
14 customer, would come to our wire room and he would send
15 wires down to either the over-the-counter department in
16 Chicago or the over-the-counter department in New York,
17 stating that he had so many shares of stock to sell on an
18 over-the-counter transaction.

19 Q Now, if the brokerage house in these transactions
20 were in New York, would the wires have gone to New York?

21 A I couldn't say that for sure. I don't know. It
22 could have went to Chicago or New York.

23 Q But if the brokerage house was in New York on
24 the other end of the transaction?

25 A It would have came to New York.

1 jkh7

Brookins-direct

2 Q It would have come to New York?

3 A Right.

4 Q So as a general practice, wires were used in
5 trades with brokerage houses that were in other states
6 and if the brokerage house in these transactions were
7 in New York, those wires would have been sent to New York?

8 MR. KIRSCHNER: Object to the question as being
9 compound and complex.

10 THE COURT: Overruled.

11 A Yes, sir, that is correct.

12 Q So the general practice was followed in this
13 case?

14 A Yes.

15 Q I show you Government Exhibit 21-A for identifica-
16 tion and ask if you can identify it.

17 A Yes. It is a check issued to George T. Parris in
18 the amount of \$36,459.53, signed by myself. That is my
19 signature.

20 Q That is your signature.

21 MR. SIFFERT: I offer this in evidence.

22 MR. DOYLE: No objection.

23 THE COURT: Received.

24 (Government's Exhibit 21A received in evidence.)

25 Q At the time that you were employed at Hornblower

1 jkl.8

Brookins-direct

2 Weeks, was there an employee by the name of Glenna L. Tromer
3 who was employed under your supervision?

4 A Yes, sir, she was my cashier.

5 Q Can you recognize her signature?

6 A Yes.

7 Q I show you Government's Exhibits 21-B through E
8 and ask if you can identify the signature on the bottom
9 right of each of these checks.

10 A Yes, sir, that is the signature of Glenna L.
11 Tromer, cashier at Hornblower, Weeks in Denver.

12 MR. SIFFERT: I offer them in evidence.

13 MR. DOYLE: No objection.

14 THE COURT: Received.

15 (Government Exhibits 21-B through 21-E received
xx 16 in evidence.)

17 Q I show you Government Exhibits 1-P, Q and K and
18 ask if you can identify them. Just answer yes or no.

19 A Yes.

20 Q Referring you to the back side on the bottom
21 right-hand corner of each of the stock certificates, on
22 the bottom of 1-K for identification is there a name that
23 appears here?

24 A Tony Scardino.

25 Q And beneath that, is there a stamp?

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Brookins-direct

1 jkh9
2 A Yes, sir.

3 Q And what is that stamp?

4 A Signature guaranteed.

5 Q And whose signature is on the bottom of that?

6 A Brookins.

7 Q Is that you?

8 A Yes.

9 Q Is that your signature?

10 A Yes.

11 Q Similarly with respect to --

12 MR. SIFFERT: Well, I offer 1-K in evidence.

13 MR. DOYLE: No objection.

14 MR. PAPE: I would like to see that, your Honor.

15 I have no objection to that, your Honor.

16 THE COURT: Received.

17 (Government's Exhibit 1K received in evidence.)

18 Q Referring to Government's Exhibit 1-P for
19 identification, you have already indicated that you can
20 identify it. Referring again to the bottom right-hand
21 portion of the stock certificate, certificate number 2681,
22 is there a signature that appears on the bottom of that
23 certificate?

24 A Tony Scardino.

25 Q And again, is there another stamp signature

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Brookins-direct

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1 guaranteed?

2 A By Glenna L. Tromer.

3 Q Is that Mrs. Tromer's signature?

4 A Yes, sir.

5 MR. SIFFERT: I offer it in evidence.

6 MR. PAPE: May I speak to the witness briefly
7 on the voir dire on this document?

8 THE COURT: Let's put the other one in and then
9 you can do it at the same time.

10 Q Government's Exhibit 1Q for identification,
11 you have already indicated you can identify it. Referring
12 to the back of the certificate, number 2882, and 2883,
13 are there signatures on the bottom of both of those?

14 A Richard E. McKibbon.

15 Q And are both stamped signature guaranteed by
16 Glenna L. Tromer?

17 A Yes, sir.

18 MR. SIFFERT: I offer this in evidence.

19 MR. PAPE: No objection.

20 (Government's Exhibit 1-Q received in evidence)

21 MR. SIFFERT: Your Honor, I have no further questions
22 at this time either.

23 MR. PAPE: Well, your Honor, I would like to begin
24 with this.
25

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Brookins-direct

THE COURT: Go ahead. Preliminary examination.

VOIR DIRE EXAMINATION

BY MR. PAPE:

Q Mr. Brookins, would you please explain for my benefit and that of the jury exactly what this "by attorney" means here?

A The "by attorney" is a registered signature with the New York Stock Exchange to clear certain people in the Hornblower Weeks chain branch stock brokerage business that were certified, that the signatures of securities are, in effect, authentic.

Q So what that means is that your employee, Glenna Tromer, has her signature registered somewhere?

A Yes, sir.

Q Is that right?

A Right.

Q Now, before she signs that signature guaranteed, does that mean that she has compared this signature with the signature of specimen of Mr. Scardino's that you have there at the office?

A Yes, sir.

Q What does that mean?

A You mean how was the stock received?

Q Exactly.

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Brookins-direct

A Okay.

Q How does she -- what does it mean when she signs her name and says signature guaranteed?

A If the stock certificate came in direct to what they call the operations department, where it was addressed to the broker, in either case, we would go to the broker and ask for him to verify that that is a true signature of Mr. Scardino, and the broker in one or two ways would either say yes, that is Mr. Scardino's, I seen him sign it, or he would call Mr. Scardino and ask if he did sign it, or some sort of a true verification before we would guarantee the signature. We were assured that it was his signature.

THE COURT: Mr. Pape, I am afraid you are blocking the jury.

MR. PAPE: Yes, your Honor.

Q But it does not mean that Mr. Scardino signed this certificate in the presence of Mrs. Tromer, does it?

A No.

MR. SIFFERT: Objection, your Honor.

THE COURT: Overruled.

A No, sir.

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Brookins-direct

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2 Q And you don't know of your personal knowledge
3 whether Mr. Scardino ever signed this certificate, do you?

4 A No, sir.

5 MR. PAPE: I would object to the admission of
6 this document.

7 THE COURT: Overruled.

8 (Government's Exhibit 1-P was received in
9 evidence.)

XX 10 MR. DOYLE: I have a few questions on cross-
11 examination.

12 CROSS EXAMINATION

XX 13 BY MR. DOYLE:

14 Q Mr. Brookins, Hornblower Weeks is one of the
15 largest brokerage houses in the United States?

16 A That is correct.

17 Q It has branch offices all over the country?

18 A Yes, sir.

19 Q It is a member of the New York Stock Exchange?

20 A Yes, sir.

21 Q And the American Stock Exchange?

22 A Right.

23 Q A member of the National Association of
24 Securities Dealers?

25 A Right.

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Q And registered with the Securities and Exchange Commission?

A Right.

Q Were the trades that you have testified about here today executed by Hornblower Weeks in the regular course of its business?

A Yes, sir.

Q Is it the regular course of business of your firm to execute such trades?

A Yes, sir.

Q Is the registered representative in a particular account the employee of your firm who deals with the customer?

A Yes, sir.

Q Who was the registered representative in this case?

A John Parker.

Q Is he still with the firm, sir?

A No, sir.

Q Do you know his present location or whereabouts?

A It is just in the Denver area; he is not in Denver right now; it is further north.

Q Do you have the present address?

MR. SIFFERT: The Government will be calling

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Mr. Parker.

MR. DOYLE: That you very much. No further questions.

THE COURT: Any further cross-examination?

You are excused.

MR. PAPE: I do have some cross-examination.

Excuse me.

CROSS EXAMINATION

BY MR. PAPE:

Q Mr. Brookins, one of the exhibits you identified was an account sheet for Mr. George Paris?

A Yes, sir.

Q Do you know him personally?

A No, sir.

Q Another was for Mr. Richard McKibbon.

Do you know Mr. McKibbon personally?

A Not personally, no.

Q Would you have anything in your records there from Hornblower Weeks that would enable us to find Mr.

McKibbon, find out where he is today?

A No, sir, not that I'm aware of.

Q Do you have anything in your records from Hornblower & Weeks that indicates that at the time these stock transfers took place Mr. Richard McKibbon had a power

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of attorney from Mr. Anthony Scardino?

A If there was such a power of attorney there should be a reocrd, yes, sir.

Q Do you have records here today that would indicate that?

A No, they would be in the Denver office.

Q When you return --

A I am no longer with Hornblower Weeks.

Q You are no longer with Hornblower Weeks?

A No, sir.

Q Were you ever in the Denver office wehen Mr. Anthony Scardino was there?

A Not that I can recall.

Q So you never saw Mr. Scardino bring a 6000-share certific ate of Pioneer stock into that Denver office?

MR. SIFFERT: Objection, your Honor. Asked and answered.

THE COURT: Overruled.

A Not that I can remember.

Q Or a 5000-share certificate?

A No, sir.

MR. PAPE: No further questions, your Honor.

THE COURT: You are excused.

(Witness excused.)

ms

JA378

B U R N E Y A C T O N , resumed.

CROSS EXAMINATION (Continued)

BY MR. KIRSCHNER:

Q Mr. Acton, I would like to ask you several important questions at this point. Listen carefully.

First, did you ever agree with Mr. Zuber -- I'm reading from the indictment now -- to secure control of many thousands of shares of stock, never registered with the SEC, in an active "Shell Corporation", namely, Pioneer, then to establish an artificial market in the stock through manipulative devices, including quotes at arbitrarily selected prices, touting, giving assurances against loss, and directing trades, and then finally to sell, pledge and distribute this unregistered stock at artificially high prices, to purchasers and lenders in order to fraudulently obtain many hundreds of thousands of dollars at their expense?

MR. WALKER: Objection.

THE COURT: Sustained.

Q Did you ever agree with Mr. Zuber to do any of those things?

MR. WALKER: Objection. It is for the jury to determine.

THE COURT: Sustained.

1 ms
2 Q Did you ever have any conversation with Mr.
3 Zuber about those things?

4 A No, sir.

5 Q Now, sir, during the course of your relationship
6 with Pioneer Development you didn't intend to defraud
7 anyone, did you?

8 MR. WALKER: Objection. Calling for the
9 operation of this man's mind. It is for the jury to
10 decide.

11 THE COURT: Yes. But his state of mind is
12 relevant.

13 Overruled.

14 THE WITNESS: Rephrase the ques' on.

15 Q During the course of your relationship with
16 Pioneer Development Corporation you did not intend to
17 defraud anyone, did you?

18 A No, sir.

19 Q Sir, did you ever conspire with Mr. Zuber for
20 the purposes of defrauding others in connection with
21 Pioneer?

22 THE COURT: Sustained. It calls for a conclusion.

23 Q Isn't it a fact, sir, that during the course of
24 your relationship with Pioneer Development Corporation you
25 did not believe you were violating the law?

MR. WALKER: Objection.

THE COURT: Sustained.

MR. KIRSCHNER: I have no further questions of this witness.

MR. WINOGRAD: On behalf of the defendant Levine no questions.

CROSS EXAMINATION

BY MR. NEWMAN:

Q Mr. Acton, I assume that you never knew Howard Finkelstein before you had that meeting with him in Reno? Is that correct?

A Yes, sir.

Q You did not know him?

A I met him right before we went to Reno.

Q On the way?

A Yes.

Q But before that you never knew him?

A No, sir.

Q Now, regarding the Pioneer Development Corporation, to your knowledge was Mr. Finkelstein ever a stockholder?

A No, sir.

Q Was he ever an officer of the corporation?

A No, sir.

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Q Was he ever an employee of the corporation?

A No, sir.

Q Now, after the meeting in Reno you got to know Mr. Finkelstein better? Is that correct?

A Yes, sir.

Q As a result of knowing him and talking with him you invited him to come out from his home in New York to the mines? Is that correct?

A Yes, sir.

Q In fact, you spent a day or so with him in Reno and then you drove out to the mine with Mr. Myron Buttram?

A Yes, sir.

MR. WALKER: Can we have a time on that?

Q I believe that was in January, 1970?

A Approximately.

Q When you got to the mine with Mr. Finkelstein and Mr. Buttram, can you tell us in your own words what was happening at the mine? Was there any equipment there?

A Yes, sir.

Q Was some of that equipment several trucks?

A Yes, sir.

Q I believe you had a bulldozer? Is that correct?

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A Yes, sir.

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Q And a generator had been built, an electric generator, at the mine?

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A Yes, sir.

6

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8

Q There was a house there? You, Mr. Buttram and Mr. Finkelstein spent some nights sleeping there, a ranch house?

9

A Yes, sir.

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Q And while you were there with Mr. Buttram and Mr. Finkelstein there was work going on in digging up some of the soil, some of the earth from the mine? Isn't that correct?

14

A Yes, sir.

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Q In fact, the bulldozer was working, being used to dig up some of this soil from the mine or the dirt from the mine?

18

A Yes, sir.

19

20

21

Q During that time it is correct, isn't it, that you had discussions with Finkelstein about your hopes in the mine?

22

A Yes, sir.

23

24

Q These hopes were that eventually the mine would be producing mercury?

25

A Yes, sir.

1 ms
2 Q And at that time you told Mr. Finkelstein that
3 the price of mercury was extremely high?

4 A Yes, sir.

5 Q Did you also have an understanding with Mr.
6 Finkelstein that when this mine became operational that
7 he would work as a salesman for the mining company selling
8 this mercury?

9 A Yes, sir.

10 Q Now, there were two engineering studies made
11 about the property of the soil or the ore in that mine?
12 Isn't that correct?

13 A Yes, sir.

14 Q Mr. Acton, you have a college degree, don't you?

15 A Yes, sir.

16 Q Did you discuss with Mr. Finkelstein in detail
17 the process of extracting the mercury from the ore?

18 A I don't recall whether I did in detail.
19 Mr. Buttram was much better qualified than I was.

20 Q Were you there when Mr. Buttram discussed the
21 quality of the ore?

22 A Yes, sir.

23 Q Was Mr. Finkelstein there?

24 A Yes, sir.

25 Q Did you believe in M.r Buttram's qualifications

1 as an expert in this field?

2 MR. WALKER: Objection.

3 THE COURT: Overruled.

4 A Yes, sir.

5 Q To your knowledge, he was an outstanding expert
6 in this type of mining operation? Is that correct?

7 A Yes, sir.

8 Q You conveyed your feelings about his expertise
9 in that field to Mr. Finkelstein?

10 A Yes, sir.

11 Q It's true also that there was a man there who
12 was Mr. Clegg's father-in-law at that time, or shortly
13 thereafter, out at the mine?

14 A Yes, sir.

15 Q That was --

16 A Mr. Mariot.

17 Q First name?

18 A Ermanno Mariot.

19 Q It's also true that Mr. Mariot had moved his
20 family out there and was working in an attempt to get
21 the mine going?

22 A Yes, sir.

23 Q What was Mr. Mariot's background? What was
24 his occupation?
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A Mechanic.

3

Q Was he working on the machinery?

4

A Yes, sir.

5

Q Did he have his family there?

6

A Yes, sir.

7

Q Where was he living at the mine?

8

A In a house trailer.

9

Q With his family?

10

A Yes, sir.

11

Q Mr. Acton, could you give us in dollar value

12

your personal investment in Pioneer Development Corporation

13

from beginning to end, the best approximation you can?

14

A Just an approximation, I would say a hundred

15

thousand dollars.

16

Q That you put in?

17

A Yes, sir.

18

Q Did you ever get any of that back?

19

A Very little.

20

Q When you sold the company?

21

A Yes, sir. Well, we got in some money from

22

some of the stock, the loans.

23

Q Now, during the month of January, 1970, when

24

you were with Mr. Finkelstein out at the mine did an

25

occasion arise when you discussed with him or explained

1
2 to him that the stock of the Pioneer Company was free
3 trading stock?

4 A I don't recall, but very possibly.

5 Q Did you ever mention the term free trading stock
6 to Mr. Finkelstein?

7 A Yes, sir.

8 Q Mr. Acton, you were asked by Mr. Doyle on cross-
9 examination if you had ever gotten a letter from the lawyer
10 for the Pioneer Development Corporation about whether or
11 not the Pioneer stock was free trading stock and I think
12 your answer was that you didn't recall?

13 A Yes.

14 Q Mr. Doyle asked you if you had been told it was
15 not, you said no, and his Honor asked you if you had ever
16 asked, and you said no.

17 What firm of lawyers was representing the
18 Pioneer Development Corporation in 1969 and 1970?

19 A E. L. Frasier -- Wadsworth, Frasier, McClung &
20 Doll.

21 Q And were they at 405 Wilshire Boulevard in
22 Los Angeles?

23 A Yes, sir.

24 Q Now, the transfer agents for Pioneer Development
25 Corporation in Reno, Nevada, was who?

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A Nevada Agency & Trust.

Q Was it the Nevada Corporations, Incorporated
involved a transfer agent also?

A Who, sir?

Q Nevada Corporations, Inc.?

A I don't recall.

Q Now, is it still your recollection that you don't
recall ever getting any letter from Mr. Frasier, of
Wadsworth, Frasier, McClung & Doll about Pioneering
Development Corporation stock being free traded?

A I don't recall it.

Q If I showed you this letter, March 20, 1970,
would you look at that and tell us if that refreshes your
recollection?

MR. SIFFERT: Is it marked?

MR. NEWMAN: I got it from you. I don't have
the marking on it.

MR. SIFFERT: Could we see it?

MR. NEWMAN: Sure.

THE COURT: Let's call it Finkelstein's Exhibit
A for now.

A Yes, sir.

Q Does this refresh your recollection, Mr. Acton,
about whether or not the lawyers for the corporation ever

A No, sir, that letter actually was written after
I was --

The question was does it refresh your recollection. I don't want to cut you off, but we will be here forever.

Q Now, regarding the transfer agency, that was the Nevada Agency & Trust Company?

Q That is a bank?

Q What was the relative position of the Nevada

A Probably the largest in Reno.

A Yes, sir.

Q And if they either directly or indirectly put the okay on trading this stock, did you then believe that

1 it could be traded?

2 MR. WALKER: Objection. Improper.

3 THE COURT: Sustained.

4 Q Now, on direct examination, Mr. Acton, you said
5 that you had been told that restricted stock was always
6 marked with a legend on the face of it? Is that correct?
7

8 A Yes, sir.

9 Q That was you knowledge of how restricted stock
10 looked?

11 A Yes, sir.

12 Q Did a time ever come that Mr. Finkelstein was
13 shown some stock by you or given some stock by you?

14 A Shown some, yes, sir.

15 Q At any time did you ever show Mr. Finkelstein
16 any stock that had such a legend on it that said "restricted"?

17 A I don't recall whether he saw it or not. He
18 probably did. There was some stock that had that legend
19 on it.

20 Q Now, Mr. Acton, your dealing with Mr. Finkelstein
21 at that time, in 1969 and the beginning of 1970 was for
22 the most part to help develop the mine? Is that correct?

23 A Yes, sir.

24 Q But there was an instance where some fur coats
25 were traded with a Mr. Grant in New York City?

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A Yes, sir.

Q Was it the understanding at that time between the parties that Mr. Finkelstein was to receive one of these coats from Mr. Grant?

A He was to receive something, yes, sir.

Q That was from Mr. Grant? Is that correct?

A Yes, sir.

Q Now, Mr. Acton, at any time did you ever discuss or consider or have any understanding or agreement with Mr. Finkelstein about any scheme to artificially raise or manipulate the price of any stock?

MR. WALKER: Objection.

THE COURT: Sustained.

Q Did you ever have any discussion at any time with Mr. Finkelstein or any understanding or agreement with him to use the mails in any way to defraud anybody?

MR. WALKER: Objection.

THE COURT: Sustained.

MR. NEWMAN: I have no further questions.

Thank you.

CROSS EXAMINATION

BY MR. PAPE:

Q Mr. Acton, in the summer of 1969 where did you reside?

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A Los Angeles California.

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Q Were you spending a fair amount of time in

4

Reno?

5

A Yes, sir.

6

Q In the summer of 1969 how long had you known

7

Anthony Scardino?

8

A A good period of time, a year, two years, three.

9

Q Did you know what his employment was at that

10

time?

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11

A Yes, sir.

12

Q What was his employment?

13

A He worked for Foley's Department Store in

14

Houston.

15

Q Do you know what he did in Foley's?

A Yes sir. I had heard he decorated hotels

17

motel.

18

Q Did you ever visit his office at Foley's?

19

A Yes, sir.

20

Q In the summer of 1969 was Mr. Scardino spending

21

a considerable amount of time in Reno?

22

A Yes, sir.

23

Q What was he doing there?

24

A Refurbishing the Riverside Hotel.

25

Q Did you and Mr. Clegg at that time have any

1
2 interest in a business which did something to walls?

3 A Yes.

4 Q Will you please describe for the jury what kind
5 of business that was?

6 A It was an electrostatic flocking business
7 where we put a felt light material on the walls.

8 Q Was that firm of yours and Mr. Clegg's hired
9 by Mr. Scardino to flock the walls of the Riverside
10 Hotel?

11 A Yes, sir.

12 Q About when was that, if you can remember?
13 I know it's five years, but if you can remember.

14 A The fall of '69, September, October.

15 Q Were you at the Riverside Hotel fairly frequently
16 during that period?

17 A Yes, sir.

18 Q Was Mr. Scardino spending most of his time in
19 Houston and part of his time in Reno? Or can you remember
20 how it was divided up?

21 A I don't know how it was divided up. I know he
22 was in Reno quite a bit.

23 Q Did you ever meet a man named Richard McKibbon?

24 A Yes, sir.

25 Q Can you remember approximately when you met Mr.

1 ms
2 McKibbon?

3 A The summer or fall of 1969.

4 Q Do you remember how you came to meet Richard
5 McKibbon?

6 A Mr. Scardino introduced me to him.

7 Q Do you know what Mr. McKibbon's relationship to
8 Mr. Scardino was at the time?

9 A I understood that he was an employee of Mr.
10 Scardino's.

11 Q There at the hotel?

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12 A At the hotel.

13 Q Do you know where Richard McKibbon is today?

14 A No, sir.

15 Q Do you have any information that you could give
16 me that would enable me to find him?

17 A No, sir.

18 Q Were you close enough to Mr. Scardino at the
19 time, Mr. Acton, to be aware that he was once hospitalized
20 in Reno?

21 A Yes. I remember something about it.

22 Q Were you aware that as a result of that hospital-
23 ization Mr. McKibbon had a power of attorney from Mr.
24 Scardino?

25 MR. WALKER: Objection.

THE COURT: Sustained. You are away outside
the scope of the direct.

JA394

ston-cross

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1 jka 1
2 2 Now, Mr. Acton, on your direct examination
3 yesterday you described a meeting at which you first met
4 Mr. Allen Segal and you testified that Mr. Scardino
5 introduced you to Mr. Segal, and I think you said that
6 was a meeting at the Sheraton Hotel in Dallas in August
7 of 1969.

8 Now, are you certain that that was the first
9 time you met Allen Segal?

10 I am not certain, but that is the way I recall it.
11 Mr. Acton, do you remember on November 15, 1973,
12 coming here to this courthouse and giving Mr. Walker a
13 statement concerning this case?

14 A Yes, sir.

15 Q If I may show you a page concerning that
16 statement --

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17 MR. SIFFERT: What number exhibit?

18 MR. PAPE: This is from 3502 material, page 5.

19 MR. WALKER: May the record reflect that that
20 is not a statement prepared by me. It is a statement prepared
21 by an investigator who is in the office with me, and it
22 contains his words and impressions.

23 THE COURT: All right.

24 Q Well, if this was a statement, do you remember
25 being in New York City on November 15, 1973, and being

1 jth? Action-dress
2 questioned at that time concerning this matter by Mr.
3 Walker and an investigator?

4 A Yes, sir.

5 Q Well, perhaps it will refresh your memory if
6 you would read from --

7 MR. WILKIN: There is nothing to be refreshed,
8 your Honor. He has answered that he does recall it.

9 THE COURT: He does recall it. I think he
10 said he wasn't certain.

11 MR. PAPP: I shall use it to approach the witness
12 then, your Honor.

13 Q At that time did you state to Mr. Walker and
14 the SEC investigator that you first met Alan Segal at the
15 Riverside Hotel while the hotel was still being decorated
16 through Tony Scardino? Do you remember stating that to them?

17 A Yes, sir.

18 Q Would it be likely that your memory was better
19 back then over a year ago than it is today or than it was
20 yesterday?

21 A Sir, at the time that I gave him that statement,
22 I did not remember the meeting in Dallas at all. Now that
23 came up afterwards, and I did recall the meeting in Dallas.

24 Q Okay. Did you remember, however, what subsequent
25 conversation or what subsequent event reminded you of the

1 j'kh3 Weston-cross

2 meeting in Dallas?

3 A Yesterday, when we were going back over all
4 the facts of the case.

5 Q When you were going over those with Mr. Walker?

6 A Yes, sir. He asked me if I did remember it
7 and I did remember it, but I did not remember it at that time.

8 Q At the meeting in Dallas-- do you remember what
9 date that would be? The approximate date?

10 A Late summer.

11 Q I think you testified that Mike Clegg was there.

12 A Yes, sir.

13 Q And Alan Segal and Mr. Scardino and you, is that
14 right?

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b2 15 A As I recall it.

16 Q Was anything discussed at that meeting in Mr.
17 Scardino's presence concerning a false scheme to manipulate
18 stock?

19 A No, sir.

20 Q Was anything discussed at that meeting in Mr.
21 Scardino's presence concerning any illegal scheme?

22 A No, sir.

23 MR. WALKER: Objection, your Honor. That asks for
24 a conclusion. I ask that that be sustained.

25 THE COURT: Sustained. Strike it out.

JA397

1 jkt
2 station-cross

3 Q Now, Mr. Aron, you testified yesterday that
4 you and Mr. Clegg out there in Reno did acquire or accumulate
5 a large block of Pioneer stock. That would be prior to this
6 Dallas meeting, would it not?

7 A Yes, sir.

8 Q Did Mr. Scardino participate in that accumulation
9 of Pioneer stock?

10 A No, sir.

11 Q Did he ever know about it, to your knowledge?

12 A Not to my knowledge, no, sir.

13 Q Now, you testified yesterday, Mr. Aron, that
14 your memory was that perhaps Mr. Scardino had been with you
15 and Mr. Segal on more than one occasion at which Pioneer
16 stock was mentioned, is that right?

17 A Yes, sir.

18 Q Do you remember testifying before the grand jury
19 here in New York on August 15, 1974, being questioned
20 by Mr. Walker?

21 A Yes, sir.

22 Q Do you remember at that time--

23 MR. SIEBERT: Page?

24 MR. PAPER: This is page 2005.

25 Q Do you remember at that time being asked by
Mr. Walker -- the question was: "After that, did you have

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1 jkt-5
2 conversations with Mr. Segal?"

3 Your answer was, "Yes."

4 "Concerning what he would do for you?"

5 Your answer was, "Yes, sir."

6 And the question was, "And was Mr. Scardino
7 present at any of those conversations?"

8 And your answer was, "I can't -- I -- possibly,
9 but I don't know for sure."

10 Do you remember answering that?

11 A Yes, sir.

12 Q Would that be your testimony now, that you are
13 not sure whether Mr. Scardino was at any of those meetings?

14 A Yes, sir.

15 Q But you can say with certainty, can you not,
16 that at any meetings at which Mr. Scardino was present
17 that no plan to defraud anybody was ever discussed in his
18 presence?

19 MR. WALKER: Objection, your Honor. That is a
20 conclusion and it is going to be a conclusion for the jury
21 to reach.

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23 THE COURT: Not in the form the question was
24 asked. Overruled.

25 Q You can say that, can you not?

A Yes, sir.

jkb6

Pilot-cross

Q You testified that there was a meeting at the Century Plaza Hotel in Los Angeles on October 23rd-- no, that would not be October 23rd. Do you remember when the Century Plaza Hotel meeting was?

A September .

Q Was Mr. Scardino at that meeting?

A No, sir.

Q You testified also yesterday that on October 2, 1969, there was a meeting in Reno at which Mr. Clegg, Mr. Segal and you were present. Was Mr. Scardino present at that meeting?

A No, sir.

Q Would it be a true, fair statement to say that Mr. Scardino was primarily concerned with the Riverside Hotel during this whole period?

MR. WALKER: Objection. That all's for--

THE COURT: Sustained.

Q You have testified, Mr. Acton, that there came a time in early November when you discussed with Mr. Scardino Pioneer Development's need for cash, and I think your testimony was that you asked him, Mr. Scardino, what he could find a loan for you against which you could pledge some Pioneer stock, is that right?

A Yes, sir.

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3 Q At that time, when that discussion took place,
4 did Mr. Scardino indicate a willingness to help you?

5 A Yes, sir.

6 Q For the record, this was a discussion on
7 approximately November 2nd or 4th at which you and Mr.
8 Scardino were present in Reno, is that right?

9 A Yes, sir.

10 Q Did Mr. Scardino ask you whether the stock was
11 free trading stock at the time?

12 A Yes, sir, I think so.

13 Q And what did you reply?

14 A That it was.

15 Q Did Mr. Scardino ask you at that time how he
16 could check to see how the stock was being traded or
17 anything?

18 A Yes, sir. I called and got names of people that
19 were trading it in the pink sheets and gave it to him and
20 told him they were welcome to call the transfer agent.

21 Q To enable him to check it out, right?

22 A Yes.

23 Q And subsequent to that, I think you testified
24 that Mr. Scardino told you that he could place a loan in
25 Tucson, is that right?

A Yes, sir.

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JA401

jkh8

Acton-cross

Q And did you deliver to him a stock certificate in his name?

A Yes, sir.

Q Do you remember when that was? Would that have been approximately November 6th?

A Yes, sir, it would.

Q And that was a certificate for 5,000 shares, is that right?

A Yes, sir, it was.

Q Do you remember any conversation at all with Mr. Scardino at that time in which he asked you why it had to be in his name?

A No, sir.

Q Okay. If you don't remember, that's fine. To your knowledge, did Mr. Scardino take that certificate to Tucson?

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A Yes, sir.

Q I think you testified yesterday that after he returned to Reno from Tucson he told you that a man was not in Tucson and he could not get the loan, is that right?

A Yes, sir.

Q At that time. Is that right?

A Yes.

Q You also testified that he was going back to

1 jkh2

Houston-cross

2 Houston so you gave him permission to let McKibben handle
3 it, is that right?

4 A Yes, sir.

5 Q And at that point Mr. Scardino had not transferred
6 that certificate, had he?

7 A No, sir.

8 Q He brought it back from Tucson, did he not?

9 A Yes, sir.

10 Q And subsequent to that, Mr. Richard McKibben took
11 charge of that certificate, did he not?

12 A The way I understand it, yes, sir.

13 Q And I think you testified that out of the
14 proceeds of the loan that Mr. Scardino or Mr. McKibben
15 was to get by pledging that stock, you had agreed to
16 lend Mr. Scardino \$7,000, is that right?

17 A Yes, sir.

18 Q So if Mr. Scardino did receive funds from that
19 stock it was with your understanding and acquiescence, is
20 that right?

21 MR. WALKER: Objection.

22 THE COURT: Overruled.

23 A Yes, sir.

24 Q You testified, Mr. Jaton, that some time in
25 mid-November you called Mr. Scardino in Houston to ask

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1 jkh10 Actor-cross

2 whether some of that stock had been sold and you testified
3 that he said no, it had not, is that right?

4 A Yes, sir.

5 Q Subsequent to that you testified that you and
6 Mike Clegg flew down to Houston and met with Mr. Scardino
7 in Houston, is that right?

8 A Yes, sir.

9 Q That would be mid-November, and did that meeting
10 take place at Mr. Scardino's office at Foley's Department
11 Store?

12 A At his office. I assume it was Foley's.

13 Q Now, at the time you said you and Mike Clegg asked
14 Mr. Scardino whether, to his knowledge, the stock had been
15 sold, is that right?

16 A Yes, sir.

17 Q And what was Mr. Scardino's reply?

18 A No, that it had not.

19 Q And I think you testified that in your presence
20 he called somebody to make sure the stock had not been sold,
21 is that right?

22 A Yes, sir.

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23 Q And did he state to you -- did Mr. Scardino state
24 to you in that meeting that, to the best of his knowledge,
25 the stock had been pledged and not sold?

1 jkh11 Acton-cross

2 A Yes, sir.

3 Q I think you testified that while you and Mike
4 Clegg were down there in Houston, being satisfied, I suppose
5 after talking with Mr. Scardino, that you asked him whether
6 he could use the same source to borrow additional money
7 for Pioneer, is that right?

8 A Yes, sir.

9 MR. PAPE: May I see Government's Exhibit 1-E,
10 the 2 shares of 5,000 and 6,000?

11 (Pause)

12 MR. PAPE: I apologize for the delay, your Honor.
13 I confused the numbers.

14 THE COURT: It's not your fault. The exhibit
b3 15 should be in order.

16 Q Now, the first certificate that you gave Mr.
17 Scardino was in the amount of 5,000 shares, is that right,
18 Mr. Acton?

19 A The way I recall it, yes.

20 Q And as you have testified, that would be some time
21 in early November, is that right?

22 A Yes, sir.

23 Q I show you that has been marked as Government's
24 Exhibit 1-K. Do you think that is that share?

25 A Yes, sir, I think so.

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jkh12

Acton-cross

Q And while you and Mike Clegg were down in Houston, talking with Mr. Scardino, subsequent to your giving him this certificate, you asked him whether he thought he could borrow more money or have McKibben borrow more money at the same place, is that correct?

A Yes, sir.

Q And subsequent to that -- did he respond? What did Mr. Scardino say?

A He said that he thought that he could.

Q And at that time, to your knowledge, was Richard McKibben in Reno?

A To my knowledge, yes, sir.

Q And I think you testified yesterday that there was a discussion at that time whereby it was agreed that Mr. Scardino said, yes, but can McKibben take care of it, is that right?

A Yes, sir.

Q Now, to your knowledge, was this \$6,000-share certificate made out to Tony Scardino? Was that ever given directly to Mr. Scardino or do you know who that certificate was given to?

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A I think it was given to Mr. McKibben.

Q So, as well as you can remember or reconstruct, after this time, this certificate was given to Mr. McKibben?

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jkb13 Acton-cross

is that right?

A Yes, sir.

Q Now, you testified that you attended the meeting
at the Holiday Inn in Reno some time between Christmas, 1969
and New Year's, 1970, at which were present, as well as
can remember, you, Mr. Acton, Mr. McKibben, Mr. Scardino,
Mr. Finkelstein, Mr. Huber and perhaps a man named Glazier,
something like that, is that right?

A Yes, sir.

Q Now, you also testified that at that meeting
Richard McKibben admitted that he had sold those blocks
of Pioneer stock and had kept the proceeds, is that correct?

A Yes, sir.

Q Did Mr. Scardino make any statement at that
meeting that indicate he knew McKibben had done that?

A No, sir.

Q Did Mr. Scardino make any statement that indicated
he was surprised that that had happened?

A Yes, sir.

Q I think you also testified that McKibben at that
meeting had paid someone to protect him, is that right?

A Yes, sir.

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Q I think you testified that Mr. Scardino had said
he didn't need any protection, is that correct?

1 jkhl4 Action-cross

2 A Yes, sir.

3 Q Have you ever known Mr. Scardino to carry a gun?

4 A No, sir.

5 Q Was Mr. Scardino at the New York meeting,
6 January 8th, when the furcoats were passed out?

7 A No, sir.

8 Q And if Mr. Scardino did receive money as a result
9 of transfers or pledges of the \$5,000-share that you had
10 made in his name and the 6,000-share certificate that you
11 had made in his name, would that be because you or you
12 and Mr. Clegg, as Pioneer, had agreed to lend him money
13 his services in finding these loans?

14 MR. WALKER: Objection. Asked and answered.

15 THE COURT: Yes. Sustained.

16 Q At any time did anyone ever, in Mr. Scardino's
17 presence, say anything that indicated a scheme to artificially
18 inflate this stock was being planned or perpetrated?

19 MR. WALKER: Objection, your Honor.

20 THE COURT: Sustained as to form.

21 MR. BAPE: I have no further questions, your Honor.

22 MR. WALKER: May I proceed, your Honor?

23 THE COURT: Do you expect to be very long?

24 MR. WALKER: Not terribly long, your Honor, but
25 there are matters that I do have to take up as redirect

1 jkh15

Acton-cross

2 as a result of this witness' cross-examination.

3 THE COURT: All right.

4 MR. GREENBERG: Your Honor, excuse me, before
5 Mr. Walker begins his redirect, there was one small item
6 of evidence which we want to ask Mr. Acton about. Mr. Walker
7 has been unable to produce it now, but I anticipate we
8 will have it after the break. May we ask it on cross-examina-
9 tion at that time?

10 THE COURT: You had your opportunity to cross-
11 examine. Why didn't you ask it then?

12 MR. GREENBERG: The item of evidence we need
13 has not been available from the government.

14 THE COURT: I'm sorry. I didn't understand that.

15 MR. WALKER: Your Honor, we looked for it during
16 the lunch hour and because this witness was on the stand
17 I was unable to go down to the office, and if during the
18 break between -- if we have a break this afternoon, I can
19 find it.

20 THE COURT: Don't get in the elevators now. I
21 don't want you to go downstairs. If you get in the elevators
22 you will never come back.

23 MR. WALKER: I will try the stairwell, your Honor.

24 THE COURT: Proceed. We will recall him.

25 REDIRECT EXAMINATION

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jkh16

Acton-redirect

BY MR. WALKER:

Q Mr. Acton, you were asked questions on cross-examination concerning the time that you met a Mr. Buttman, do you recall that?

A Yes, sir.

Q Do you recall those questions and, specifically, sir, was that meeting in January 12, 1970?

A Approximately.

Q When you introduced Mr. Segal to Mr. Buttman on January 18, 1970, the stock of Pioneer had been trading for two and a half months, had it not?

A Yes, sir.

Q To your knowledge was that the first time that Segal ever made Buttman?

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A Yes, sir.

Q You were asked questions by Mr. Doyle on cross-examination concerning the relationship of your getting loans in the west and Mr. Segal's activities in the east, is that correct?

A Yes, sir.

Q You made clear to Mr. Segal that the operations of this mine depended upon the infusion of a lot of money, is that correct?

A Yes, sir.

jkh17

Action-redirect

Q And Mr. Segal had promised you \$300,000 or thereabouts, is that correct?

MR. DOYLE: Objection, your Honor. It is a leading question.

THE COURT: Sustained. It is not proper redirect as well. Brought out on direct.

MR. WALKER: Very well.

Q Apart from the \$20,000 stock which Mr. Doyle mentioned on cross-examination, was any additional money furnished by Mr. Segal to you?

MR. DOYLE: Objection, your Honor. I don't think this is within the scope of redirect.

THE COURT: Sustained.

Q These lawyers asked you questions concerning whether or not you had conversations concerning whether or not this stock was free trading or not, is that correct?

A Yes, sir.

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Q Did you ever ask your corporate attorney, Mr. Frasier, for an opinion letter or an opinion, formal opinion as to whether or not this stock was free trading or not?

MR. DOYLE: Asked and answered, your Honor.

THE COURT: Sustained. I asked it and he answered it.

MR. WALKER: Very well, your Honor.

JA411

1 jkh18 -redirect

2 Q On cross-examination, sir, Mr. Pape, I believe,
3 asked you questions concerning whether or not you had
4 had conversations with Mr. Scardino in the spring concern-
5 the accumulation of stock in Pioneer, and you said that you
6 had not; was that your testimony?

7 A That I had -- ?

8 Q That you had not discussed the fact that you
9 were accumulating the stock with Mr. Scardino.

10 A I don't think so. I don't remember discussing
11 accumulating the stock.

12 Q Did you have conversations with Mr. Scardino
13 during that period of time?

14 A Yes, sir, I had conversations with him.

15 Q Did you discuss Pioneer during that period of time?

16 A Yes, sir.

ONLY COPY AVAILABLE

17 Q And did you discuss what you and Mr. Clegg
18 were doing in Pioneer at that time with him?

19 A Yes, sir, to some extent.

20 Q Now, you testified on cross-examination that
21 you had authorized Mr. Scardino to take \$7,500 out of the
22 moneys that he was going to get from selling this Pioneer
23 stock, from borrowing on this Pioneer stock. Is that correct?

24 A Yes, sir.

25 MR. PAPE: Objection, your Honor, unless he

JA412

1 jkhl9 Acton-redirect

2 clarifies that is as to the first 5,000 certificate.

3 MR. WALKER: I will clarify it.

4 Q Did you ever authorize him to get any more
5 money other than the \$7,500?

6 A No, sir.

7 MR. PAPE: On the first certificate again, your
8 Honor.

9 Q On anything is the question. Did you ever autho-
10 him to get more than a \$7,500 loan?

11 A No, sir, not that I remember.

12 Q That is in respect of any loan with Pioneer
13 stock.

14 A Yes, sir.

15 Q \$7,500 was the limit that you placed, is that
16 correct?

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17 MR. PAPE: Repetitious, your Honor. He has
18 answered.

19 THE COURT: I don't think so. Overruled.

20 A Yes, sir.

21 Q As to that \$7,500 that you said Mr. Scardino
22 could borrow, did you physically receive any repayment of
23 that money?

24 A No, sir.

25 Q You were shown a 6,000-share certificate which

JA413

1 jkh20 Acton-redirect

2 you stated you believed was given to Mr. McKibben, is
3 that correct?

4 A Yes, sir.

5 Q Did you see the signature on that?

6 MR. WALKER: Excuse me, your Honor.

7 (Pause)

8 Q Do you see this signature on the 6,000-share
9 certificate, sir?

10 A Yes, sir.

11 Q Can you identify that signature?

12 A It states Tony Scardino on it. I am not that
13 familiar with the signature to know.

14 Q It says --

15 A It says Tony Scardino.

16 Q It bears a signature guaranteed stamp, does it
17 not, by Glenz Tromer?

18 MR. PAPE: Objection. The document speaks for
19 itself.

20 THE COURT: Sustained.

21 Q Mr. Acton, you pled guilty to conspiracy in this
22 case, is that correct?

23 A Yes, sir.

24 Q And did the guilty plea by you, sir, in that
25 guilty plea, did you acknowledge that you conspired with a

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JA414

jkh21

Aston-redirect

defendants, with others, to violate the securities laws
in connection with Pioneer?

MR. DOYLE: Your Honor, I think that was covered
on direct. I think it is beyond the scope.

THE COURT: Overruled.

A Yes, sir.

Q And did you plead guilty, sir, to conspiring
to violate the laws against securities fraud, mail fraud,
selling unregistered stock and conspiracy?

A Yes, sir.

Q Specifically, sir, referring to paragraph 2
of the indictment, this indictment says that the object
of this conspiracy was to secure control of many thousands
of shares of stock, never registered with the SEC, in
an inactive shell corporation.

MR. KIRSCHNER: Objection, your Honor.

THE COURT: You may put the question on recross.
He has opened the door. Go ahead.

Q Have you read this indictment?

A Yes, sir.

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Q And you read the conspiracy count?

A Yes, sir.

Q And you consulted with your lawyer on that?

A Yes, sir.

jkh22

Acton-reflex

Q And did you plead guilty, sir, knowingly and voluntarily?

A Yes, sir.

Q Because you knew you violated the law?

A Yes, sir.

Q And did you plead guilty, sir, to the conspiracy count because you are guilty and for no other reason?

A Yes, sir.

Q Did you plead guilty to count 2 of this indictment?

A Yes, sir.

Q And that charges you, in effect, with transporting or causing to be transported 111,000 shares of unregistered Pioneer stock in interstate commerce, is that correct?

A Yes, sir.

MR. WALKER: I have no further questions of this witness.

THE COURT: Mr. Newman and Mr. Kirschner, if you wish to ask questions to which I sustained an objection earlier, you may.

MR. KIRSCHNER: I just have one question for Mr. Acton.

RE CROSS EXAMINATION

BY MR. KIRSCHNER:

Q Did you ever agree with Mr. Walker to secure con

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Acton-recross

of many thousands of shares of stock never registered with the SEC in an inactive shell corporation, namely Pioneer, then to establish an artificial market in the stock through manipulative devices, including quotes at arbitrarily selected prices, touting, giving assurances against loss and directing trades, and then finally to sell, pledge and distribute this unregistered stock at artificial, high prices to purchasers and lenders in order to fraudulently obtain many hundreds of thousands of dollars at their expense.

A No, sir.

MR. KIRSCHNER: Thank you.

RE-CROSS EXAMINATION

BY MR. NEWMAN:

Q Mr. Acton, I don't want to go all over that again. Just to paraphrase it, did you conspire a scheme with Mr. Finkelstein to do any of the acts that Mr. Kirschner has just mentioned with Mr. Zuber?

A No, sir.

MR. NEWMAN: Thank you.

THE COURT: Any other examination of this witness?

MR. DOYLE: Nothing further.

MR. PAPER: Your Honor--

THE COURT: They are excused, subject to recall.

MR. PAPER: Your Honor, I do have a brief question.

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1 jkh24

Action-recross

2 THE COURT: Can you shoot it from there?

3 MR. PAPE: Yes, sir, I can shoot it from here.

4 BY MR. PAPE:

5 Q. Mr. Acton, at the time you entered the guilty
6 plea in this case, were you financially well off or
7 were you a poor man?

8 MR. WALKER: Objection as irrelevant.

9 THE COURT: Sustained.

10 MR. PAPE: No further questions, your Honor.

11 THE COURT: That wasn't a question.

12 We will take our recess now.

13 (Witness excused.)

14 (Recess)

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2 MR. WALKER: Your Honor, we are ready for the
3 next witness.

4 THE COURT: I notice that a couple of you jurors
5 are taking notes. I would direct you not to do that.
6 You can't possibly get it word for word and it distracts
7 from your watching the witness and observing his demeanor.
8 You are looking at the forest, instead of the trees.
9 At the end of the case if you can't remember the evidence
10 and if your fellow jurors can't refresh your memory and if
11 you want read back exactly what the witness said, we have
12 a court reporter here who will read it back. That is
13 why he is here. I am sure -- please don't ask questions.
14 I anticipate that your problem is you can't relate at all,
15 and in a case like this that is almost impossible as it
16 goes in. It is something like a jigsaw puzzle. But at
17 the appropriate time the lawyers will make their closing
18 arguments, at which time it is their job to weave the
19 threads of the evidence into a fabric of proof that is
20 understandable to you.

21 So you just watch these witnesses, remember what
22 they say as best you can, and the lawyers will hopefully
23 tie it together for you in their closing arguments.

24 MR. WALKER: May I get the next witness, your
25 Honor?

2 S T U A R T S C H I F F M A N , called as a
3 witness by the Government, being first duly sworn
4 testified as follows:

5 DIRECT EXAMINATION

6 BY MR. WALKER:

7 Q Mr. Schiffman, directing your attention, sir, to
8 1969, how were you employed at that time?

9 A I was an attorney.

10 Q Specifically, sir, where were your offices?

11 A 26 Court Street in Brooklyn.

12 Q At that time did you know Alan Segal?

13 A Yes, I did.

14 Q Do you see him here in the courtroom?

15 A Yes.

16 Q Which one is he?

17 A The gentleman standing up there.

18 Q How long had you known Mr. Segal?

19 A Oh, about a year and a half at that time.

20 Q What was your relationship with Mr. Segal?

21 A I acted as attorney for Mr. Segal, and it was
22 a social relationship, too.

23 Q Specially, sir, does the name Kelli, Jackson &
24 Scott mean anything to you?

25 A Yes, it does.

1 ms Schiffman-direct 284

2 Q What was Kelli, Jackson & Scott?

3 A It was a corporation that was used to invest

4 money in various business enterprises.

5 Q Whose corporation was it?

6 A Well, Mr. Segal owned the corporation and I acted

7 his nominee for the corporation.

8 Q When you use the word "nominee," what do you

9 mean?

10 A Well, I was the president of the corporation.

11 I signed all the checks and held myself out as the president

12 of the corporation, and, in fact, was, and Mr. Segal was

13 the equity owner of the stock.

14 Q Did you act on your own behalf in connection with

15 Kelli, Jackson & Scott at any time?

16 A No, sir.

17 Q Did you always act on the instructions of Mr.

18 Segal in conducting the affairs of Kelli, Jackson & Scott?

19 A Yes.

20 Q Where was the firm of Kelli, Jackson & Scott

21 located?

22 A Well, the books and records, that is, the check-

23 books and receipts were kept at my law office in Court

24 Street. The corporate books, I don't know where they

25 were located.

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Q Did you ever see them?

A No.

Q With respect to checks drawn on the account of Kelli, Jackson & Scott, were those signed by yourself?

A Yes.

Q Were checks ever drawn independently of Mr. Segal's instructions?

A No, they were not.

Q Were there any occasions, sir, where checks were signed by yourself and just given in blank to Mr. Segal?

A Yes, there were times when that was done.

Q Directing your attention, sir, to 1968 and 1969, that period, what was the duration of your tenure as the nominal president of this company?

A Well, from I believe the beginning of '69 to the end of '68, until either the end of '69 or early '70.

Q Were there any documents that you ever saw on which Mr. Segal's name appeared as an officer or being involved with the company in any way?

A No.

Q Now, sir, directing your attention to the summer or fall -- excuse me -- the early fall of 1969, did there come a time when you went to the Century Plaza Hotel in

1 ms Schiffman-direct 286

2 Los Angeles, California?

3 A Yes.

4 Q Whom did you go with?

5 A Mr. Segal.

6 Q What were the circumstances that led you to go
7 out there?

8 A Mr. Segal asked me to accompany him to Los
9 Angeles to look into a business transaction, investment,
10 for Kelli, Jackson & Scott that he was thinking of making.

11 Q What happened?

12 A Well, we flew to Los Angeles, and on the way out
13 he explained to me that he had had some meetings with some
14 people who were involved with this company.

15 Q Did he mention the name of the company?

16 A Yes.

17 Q What was the name of it?

18 A Pioneer Development Corporation. And he said
19 if the time came when things loosened up a little that he
20 might make an investment in the company, and he wanted me
21 to go there with him and see what we could find out about
22 the company.

23 Q When you got to Los Angeles what happened?

24 A When we arrived we were met at the airport by
25 three gentlemen, I believe.

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2 Q Who were they?

3 A Mr. Clegg, Mr. Acton, and a gentleman by the
4 name of Walker.

5 Q Was there any conversations that evening?

6 A Well, we went from the landing area to a bar at
7 the airport, and we had a few drinks, and there was some
8 conversations and discussions concerning various assets of
9 Pioneer Development Corporation and possible acquisitions
10 of companies that they thought might possibly be willing to
11 be acquired by Pioneer.

12 Q Who was present during those conversations?

13 A Myself, Mr. Segal, Mr. Acton, Clegg, and I
14 believe Mr. Walker.

15 Q Following that did you go to the Century Plaza
16 Hotel?

17 A Yes, sir, that evening we checked into the
18 Century Plaza.

19 Q What was the nature of your accommodations in
20 the Century Plaza?

21 A I think we had a two-bedroom suite.

22 Q Do you recall having meetings at the Century
23 Plaza that weekend?

24 A Yes, there were a number of meetings that we had.

25 Q Was it over a weekend, sir?

1 A Yes, I believe we arrived on a Friday and left
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3 on a Sunday.

4 Q Do you know, sir, whether it was in the fall of
5 1969?

6 A Yes, it was in the fall.

7 Q How do you know that?

8 A Well, I remember the approximate time and also
9 that we were watching football games on television in the
10 hotel.

11 Q Directing your attention, sir, to the first
12 meetings or meeting, who was present?

13 A In the hotel?

14 Q Yes.

15 A Mr. Walker, Mr. Clegg, and Mr. Acton.

16 Q You and Mr. Segal were there too?

17 A Correct.

18 Q What was discussed? Who said what?

19 A Mr. Clegg and Mr. Acton both said that they had
20 investigated this mining company which was owned by Pioneer
21 and that they thought that with the proper funds being used
22 the mine could develop into a very profitable situation
23 and they talked about a cigarette filter company that they
24 thought they could acquire and a few other companies.
25 They mentioned the fact of a gentleman who owned a company

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3 that they could acquire which was a company that con-
4 structed airstrips in southeast Asia for the Government.

5 Q What happened in connection with that conversa-
6 tion? Do you have any specific recollections?

7 A Yes. Mr. Clegg said that the fellow who owned
8 the construction company was somewhere in the area and
9 that he could call him and get him to come over and talk
10 about the company and what it did.

11 Q What happened?

12 A Well, this man came over -- I don't recall his
13 name -- and he said that he had Government contracts to
14 build airstrips in southeast Asia for the U. S. Armed
15 Forces and he said the profit picture was tremendous, and
16 he started to talk about millions of dollars that he was
17 going to make on these contracts. And I asked him for
18 some financial statements, and he said he could get them.
19 and he left with Mr. Clegg.

20 Q Did there come a time when you saw him again or
21 saw Mr. Clegg again?

22 A Well, a couple of hours later he came back with
23 Mr. Clegg and he handed me some sheets which he had typed
24 or somebody had typed, some information concerning assets
25 and liabilities of his company.

Q Well, could you describe the statement that

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1 you saw?

2 A Well, it was on blank paper, it was not on
3 stationery and it was not certified, nor did it have any
4 accounting firm language on it.
5

6 Q What did you do at that point?

7 A Well, at that point I told Mr. Segal that I don't
8 think based upon the information that he gave us about the
9 company, that I don't think we can hold any truth in the
10 fact that he has all these assets without further proof.

11 Q Then what did you do?

12 A Well, then I left the meeting and I went down
13 one of the hotel shops.

14 Q Did you return to New York with Mr. Segal?

15 A Yes, I believe we did.

16 Q Did you discuss the company with Mr. Segal on
17 your trip back?

18 A Yes, we did. We discussed the company, and
19 there were many discussions about the company. In particu-
20 lar, I told Mr. Segal at the time that we would have to see
21 further proof of their assets and that they are worth before
22 I thought that he should make an investment in the company.

23 Q What proof had you seen up to that point?

24 A Well, at that point we had seen in the meeting
25 that I attended no actual proof of the value of any of the

assets that they owned nor of the type that they intended to acquire.

Q Did you point that out to Mr. Segal?

A Yes.

Q Now, sir, did there come a time when Mr. Segal made a telephone call to you, directing attention now to approximately October 31, and asked to meet you?

A Yes.

Q What was that conversation? What did he say?

A Well, he said that either he had or intended to make an investment into Pioneer and he asked me to meet him and discuss if I could find a stockbrokerage firm that would be willing to trade the stock.

Q What did you say?

A Well, I met with him and said, "I will see what I could do, I will talk to some firms that might be interested in trading the stock."

Q Then what did you do?

A Well, the next day, or two days later, Mr. Segal had a delivery of what is called a due diligence file delivered to my office, and that contains various items on the company, and I took that due diligence file and I brought it to a brokerage firm called Karon & Company.

Q Did you read this due diligence file yourself?

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2 A Well, I looked through it. It was something
3 about mines, and not being an expert in mines and not being
4 an expert in mines and not being able to understand it, I
5 didn't really read it.

6 Q What did you do with that file?

7 A Well, I took it over to Karen & Company and I
8 talked Mr. Azzerone, who was the president of Karen &
9 Company, and I gave him the due diligence file and I asked
10 him if he would be willing to trade the stock, and he said,
11 well, he wanted to know, first of all, how he could go
12 about opening it in the pink sheets, which is where the
13 over-the-counter stocks trade, due to the fact that it was
14 not trading at the time, and I said that we have to fill
15 out a form for the National Quotation Bureau and see if
16 they will okay it for trading in the pink sheets.

17 Q Would you tell the Court and jury what Mr.
18 Azzerone's position was?

19 A Well, he was, I think, the president of Karen &
20 Company, which was an over-the-counter stockbrokerage
21 firm.

22 Q What specifically was the size of Karen &
23 Company at that time?

24 A Well, do you mean employees or capital?

25 Q Approximate employees?

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A Probably about 12 or 13 employees.

Q What was the conversation that you had with him concerning the use of the form?

A Well, I said the form is necessary because no one is trading the stock now and it has to be approved so we have to fill out the form, and he obtained the form from the National Quotation Bureau and I filled in the pertinent information for him, and then he signed it and forwarded it to the National Quotation Bureau.

Q Is it your understanding as a lawyer practicing at this time that this form was required before stock could be traded over-the-counter?

A Yes, sir.

Q Where did you get the information that you put on the form?

A Some of the information was in the due diligence file, and I'm not sure what is on the form now, but if I could look at it --

Q I show you Government's Exhibit 100 for identification.

Can you identify that form?

A This is the form that I filled out.

Q Is that the form you have been talking about in court here that you have testified about?

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A Yes.

MR. WALKER: I offer it.

MR. DOYLE: No objection.

THE COURT: Received.

(Government's Exhibit 100 was received in evidence.)

Q Mr. Schiffman, I ask you, sir, with respect to that form, where did the figure 5-6 come from and what did that figure mean on the form?

A Well, that is the bid and asked figure, 5 being the bid and 6 being the asked, which on this form means at what price the security is going to be quoted initially in the pink sheets.

Q What led to tht figure, 5-6 being put into that form?

A Well, I told Mr. Azzerone to put it into the form.

Q How did you arrive at that figure?

A Well, I asked Mr. Segal what figure the stock was going to be opened for trading and he said, "Well, 5-6."

Q Did you have any further conversation with Mr. Azzerone at that time concerning how he could go about trading the stock?

A Well, as is customary in that kind of situation,

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Schiffman-direct

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2 he wanted to know how he was to expect the market to trade
3 and whether or not if he was hit with a lot of stock,
4 which means if he bought a lot of stock, would there be
5 any buyers who would be willing to buy it from him, and if
6 he sold stock and didn't have it to supply against the sales
7 that he made, would there be any people who would be willing
8 to fill his short position, as it is called.

9 Q To supply him with stock if he sold it?

10 A Yes.

11 Q What did you say?

12 A I told him there probably would be and he
13 shouldn't worry about it.

14 Q Was anything mentioned at that time concerning
15 the sale or delivery of stock by Zahl or Segal?

16 A Yes, I told Mr. Azzerone that a Francine Zahl
17 would have some stock for sale, and that she would have it
18 delivered to him and she would tell him when to sell it.

19 Q Who is Francine Zahl?

20 A It is Mr. Wegal's secretary.

21 Q At that time did you have any conversations
22 with Segal as to how much stock would be delivered to Karen
23 & Company by Francine Zahl?

24 A I forgot the amount, but he said that Francine
25 Zahl was going to be a seller of stock and that she would

1
2 deliver the stock to Karen & Company and open an account
3 there.

4 Q Now, sir, I want to shift to something else now.

5 Directing your attention to mid-September of
6 1969 did you have a conversation with Segal concerning the
7 taking out of a loan on behalf of Kelli, Jackson & Scott?

8 A Yes.

9 Q Will you tell us what that concersation was?

10 A Well, Mr. Segal asked me to go with a gentleman
11 by the name of Leonard Close to Boston. Close was a
12 fellow that Mr. Segal and I both knew, and Close was going
13 to attempt to arrange a bank loan for Kelli, Jackon & Scott
14 in Boston, and Mr. Segal asked me to go to Boston with
15 Close and see if I could get the loan made.

16 Q What did you do then?

17 A Well, I went with Mr. Close to Boston and we went
18 to a bank in, I think, Waltham, Massachusetts.

19 Q Is that the Guaranty Trust Company?

20 A Yes.

21 Q What happened there?

22 A Well, Mr. Close spoke to one of the bank officers
23 for a while and then he brought me into a meeting with the
24 officer, and the bank officer, whose name I don't recall,
25 said that due to the fact that Kelli, Jackson & Scott was

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Schiffman-direct

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2 a New York corporation and they didn't want to loan money
3 directly to New York corporations, he was going to make
4 the loan to Mr. Close, and that myself and Kelli, Jackson
5 & Scott would guarantee the loan, and in that way Kelli,
6 Jackson & Scott could receive the proceeds of the loan.

7 Q Were certain documents executed on September 16,
8 1969, in connection with that loan?

9 A Yes.

10 Q I show you Government's Exhibit 28-A and 28-B
11 for identification.

12 Can you identify those?

13 A Yes.

14 Q What are they?

15 A Well, 28-B is a copy of the guarantee which I
16 signed as president of Kelli, Jackson & Scott, guaranteeing
17 Close's loan from the bank in the amount of \$50,000, and
18 on the back I personally guaranteed the loan.

19 Q You, Stuart Schiffman, personally guaranteed it?

20 A Right.

21 Q What is the other document, 28-A?

22 A That is a receipt given to Mr. Close for the
23 securities which I gave to him which were put up as
24 collateral for the loan.

25 Q At that time what were the securities?

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2 A It is 8500 shares of David North and Associates.

3 MR. WALKER: I offer these documents.

4 MR. DOYLE: No objection.

5 (Government's Exhibits 28-A and 28-B were received
6 in evidence.)

7 Q Mr. Schiffman, with respect to this loan from
8 the Guaranty Trust Company did there come a time later on
9 that fall when you had a conversation with Mr. Segal con-
10 cerning the use of Pioneer stock in connection with that
11 loan?

12 A Well, there came a time when the bank either
13 wanted some payment or further collateral and Mr. Segal said
14 that --

15 Q Did they contact you?

16 A Yes, Close contacted me.

17 Q What did he say?

18 A He said that either the bank asked for further
19 collateral or a reduction of the loan, and I spoke to
20 Mr. Segal and he said that he will take care of it, he will
21 send some Pioneer up there or other collateral or possibly
22 reduce the loan.

23 Q I show you 28-F for identification and ask if
24 this refreshes your recollection and the approximate date?

25 A Yes, sir.

1 ms

2 Q What is that?

3 A December 15, 1969.

4 Q Did Segal tell you at that time how much Pioneer
5 stock he would put up?

6 A No.

7 Q That was carried on without your involvement?
8 If stock was pledged you did not participate in that
9 directly? Is that correct?

10 A That is correct. ✓

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1 jkh 1 Schiffman-direct

T5 pm 2 Q Directing your attention to approximately
3 October 7, 1969, did you have a further conversation with
4 Mr. Segal concerning another loan at the First Industrial
5 Bank?

6 A Yes.

7 Q And what was that conversation, sir?

8 A Mr. Segal asked me to go to Boston and meet
9 Close and go to the Industrial Bank in Boston where Close
10 thought that he might be able to obtain an additional loan
11 for Kelli, Jackson & Scott.

12 Q What did you do?

13 A Well, I went to Boston and Close picked me up
14 at the airport and we went to the Industrial Bank and he
15 went inside, had a meeting with an officer, called me in.
16 I met an officer at the bank and he said to me that he
17 wasn't sure whether -- he personally thought there would
18 be no problem with the loan, but it had to go before a
19 committee and it would take a day or two and he felt that
20 the loan would go through.

21 Q And at that time, sir, did you fill out a form?
22 I show you 27-A for identification. '

23 A Well, I took the form back to New York with me
24 and had it filled out in New York and then forwarded it
25 back to the bank.

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Schiffman-direct

Q Did there come a time, sir, when the loan was granted?

A Yes.

Q I show you 27C for identification and ask you to look at that and see if you can identify it.

A This is a receipt showing the proceeds of the loan credited to the Kelli, Jackson & Scott account that was opened up at the bank.

Q And how much?

A \$60,000.

MR. WALKER: I offer these two documents, your Honor.

MR. DOYLE: No objection.

MR. NEWMAN: May I just see them?

No objection.

THE COURT: Received.

(Government's Exhibits 27-A and 27-C received in evidence.)

Q At the time that that loan was first obtained, do you recall the names of the securities that were placed with the bank in mid-October of 1969?

A Well, one was Day-Pak or something or other, and the other one I can't recall offhand.

Q I show you 27-B and ask you if that refreshes

jkh3

Schiffman-direct

your recollection.

A Yes; Day-Pak Industries and Universal Major.

MR. GREENBERG: What was the second name, your Honor?

THE COURT: Universal Major?

MR. WALKER: Yes.

Q And did there come a time, sir, thereafter when you were contacted in connection with that loan and the need to put up additional collateral or to part off part of the loan?

A Yes.

Q And would you tell the court and jury what happened in that connection?

A Well, I again contacted Mr. Segal and he said that he would take care of it.

Q Did he say what he would do?

A Either pay or put up additional collateral.

Q Did he mention what collateral he would put up?

A I'm not sure at that time.

Q I show you 27-E for identification and ask you if that refreshes your recollection.

A Well, yes. He said he probably would send up some Pioneer stock.

Q Now, I show you this document here and ask you if

1 jkh4 Schiffman-direct
2 is -- can you identify that document?

3 A Well, it is a letter to the bank in Boston
4 showing the additional certificates of stock that are
5 being sent up as collateral for the loan.

6 MR. WALKER: I offer it.

7 MR. GREENBERG: May I see that a minute?

8 MR. DOYLE: I have no objection.

9 THE COURT: Received.

xx10 (Government's Exhibit 27E received in evidence.)

11 Q With regard to this document, sir, did you
12 participate in the preparation of that document in any way?

13 A No.

14 MR. DOYLE: Excuse me, what was the answer?

15 THE COURT: No.

16 MR. WALKER: No.

17 Q Do you recognize the signature on the document?

18 A Well, I see what the signature is, but I can't
19 say that I recognize it.

20 Q All right, fine. Mr. Schiffman, were you ever
21 sued on either of these two loans personally?

22 A Yes, on both of them.

23 Q When were you sued and for what amounts?

24 A Well, the exact time of the commencement of the
25 suit I don't really recall. I think it was some time in '70

jkl5

Schiffman-direct

or -- in the latter part of '70, and I believe both amounts were over \$40,000.

THE COURT: You mean in the aggregate?

THE WITNESS: No, I mean each.

THE COURT: Each amount.

Q To your knowledge, sir, were these loans ever paid?

A Not to my knowledge, no.

Q Did you have any conversations with Mr. Segal when you were sued personally on these loans?

A Naturally, yes. I told him.

Q You told him about it?

A Yes.

Q Had you yourself received any of the proceeds of these loans or had these loans gone to Mr. Segal?

A They had gone to Kelli, Jackson & Scott.

Q Now, sir, apart from the stock that Mr. Segal told you would be delivered to Karen for sale, were you ever told by Mr. Segal of the distribution or sale of any additional Pioneer stock by him or by anyone else beyond that amount?

A No.

Q Did Mr. Segal ever tell you about any stock sales that were being conducted by him at any other broker?

1 jkh6

Schiffman-direct

2 A No.

3 Q You have practiced law as an SEC attorney and
4 you were practicing law at that time, is that correct?

5 A That's correct.

6 Q And was it part of your function and respon-
7 sibilities to work on registration statements and filings
8 of registration statements and preparation of registration
9 statements and prospectuses for companies which were
10 offering stock to the public?

11 A Yes, it was.

12 Q Would you tell us, sir, what materials you put
13 in a registration statement, what information you put in
14 the registration statement when it is sent out to the public?

15 A Well, the reasoning for filing of a registration
16 statement, when a company is going to offer stocks to the
17 public, is based upon the need for disclosure of certain
18 information which the regulations require be disclosed
19 to prospective purchasers of the stock, so that they can
20 make a decision on whether to buy it or not, allegedly based
21 upon the information which they can rely upon as being
22 truthful.

23 The information that is required is naturally the
24 kind of business that the company is in, how long they
25 have been in business, if they have indeed been in business

jkh7

Schiffman-direct

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2 for a while; the financial background and history of the
3 company, if there is any; the names of the offices and
4 managers, their backgrounds, the amount of stock the officers
5 own and what they paid for their stock.

6 THE COURT: Mr. Walker, isn't this a matter of law?

7 MR. WALKER: Your Honor, I think that this witness
8 can testify as to his experience as an attorney.

9 THE COURT: No, strike it out. This is a question
10 of law for the court. If you want me to instruct the
11 jury on it, submit an appropriate charge.

12 MR. WALKER: Very well.

13 Q Did there come a time, sir, when you went into
14 the brokerage business?

15 MR. DOYLE: Objection, your Honor, as to relevancy.

16 THE COURT: I will let it go a little ways.

17 MR. WALKER: Very well. I will withdraw that
18 question, your Honor.

19 Q Did there come a time, sir, when you purchased
20 a firm called Kelly, Andrews & Bradley as distinguished
21 from Kelli, Jackson & Scott? It has nothing to do with
22 Kelli, Jackson & Scott.

23 A Yes.

24 Q And, sir, would you tell us approximately when
25 that was?

jkh8

Schiffman-direct

1 jkh8
2 A July of 1970.

3 Q Prior to that, who was the president of Kelly,
4 Andrews & Bradley?

b3 5 A A gentleman by the name of Schwiedock.

6 Q Now, sir, following your entry into the brokerage
7 business in 1970, did you engage in activities for which
8 you were subsequently prosecuted by this office?

9 MR. DOYLE: Your Honor, I would object to this
10 unless it has some bearing on some issue other than Mr.
11 Segal and the charges in this case. If Mr. Walker is trying
12 to lay some basis --

13 THE COURT: Come up and make an offer of proof.

14 (Side bar.)

15 MR. WALKER: Your Honor, it is the government's
16 position that we are entitled -- this witness has been--

17 THE COURT: What are you trying to prove, not
18 what your position is?

19 MR. WALKER: I want to bring out on redirect the
20 fact that this man has pled guilty in various cases, as
21 I did with the last witness.

22 THE COURT: In redirect?

23 MR. WALKER: I mean on direct, the fact that he
24 has pled guilty in various cases.

25 THE COURT: You can bring out that he has been

1 jkh9

Schiffman-direct

2 convicted of a crime.

3 MR. WALKER: Very well. All right.

4 THE COURT: Period.

5 (Open court.)

6 Q Mr. Schiffman, have you pled guilty to various
7 charges in this courthouse?

8 A Yes, I have.

9 Q And, sir, are these cases presently awaiting
10 sentence?

11 A Yes, they are.

12 Q And were there specifically two stock fraud
13 conspiracy charges that you pled guilty to?

14 A Yes, sir.

15 Q Do you have an understanding with the government
16 that any cooperation that you render which includes testifying
17 truthfully in various cases will be brought to the attention
18 of the sentencing judge?

19 A Yes, I do.

20 Q You also have an understanding that should your
21 cooperation be unsatisfactory or should you not testify
22 truthfully you could be prosecuted for these crimes?

23 A Yes.

24 Q And sir, is it also your understanding that you
25 are obligated to plead guilty to one additional indictment?

jkh10

Schiffman-cross

A Correct.

MR. WALKER: I have no further questions.

MR. DOYLE: May I proceed, your Honor?

THE COURT: Yes.

CROSS EXAMINATION

BY MR. DOYLE:

Q Mr. Schiffman, in addition to serving as president of Kelli, Jackson & Scott, you have also served in the capacity of attorney to Mr. Segal for some period of time in the past, haven't you, sir?

A Correct.

Q During what period of time was there an attorney-client relationship between you and Mr. Segal?

A From some time in 1968 until, oh, the spring of 1970.

Q And was Karen Securities Corporation also a client of yours, sir?

A At times they were, yes.

Q At the time of the transaction that you testified about on direct examination, was Karen Securities a client of yours?

A I had been doing some work for them, yes, but, you know, they weren't on retainer, if that is what you mean. That's all I'm trying to distinguish.

1 jkh11 Schiffman-cross

2 Q But you had been doing legal work in connection
3 for them?

4 A Yes.

5 Q And securities law is or at that time was a
6 specialty of yours, is that correct, a specialization?

7 A Parts of securities law, yes.

8 Q Parts of securities law, fine. Now, going back
9 to the testimony that you gave on direct examination about
10 your visit to Los Angeles when you accompanied Mr. Segal,
11 was there an occasion during your stay in Los Angeles when
12 you met a Mr. Fred Frasier?

13 A An attorney?

14 Q An attorney.

15 A Yes.

16 Q And do you recall whether that was on Sunday
17 of the weekend that you were there?

18 A Well, it was either on Saturday or Sunday. I'm
19 not positive. I tend to think it was on Saturday.

20 Q To the best of your recollection who else was
21 present at the time when you met Mr. Frasier?

22 A Mr. Segal, Mr. Clegg, Mr. Acton and I believe
23 Mr. Walker.

24 Q Now, at some time during the conversation at
25 which Mr. Frasier was present, did he not say that the stock

jkh12

Schiffman-cross

1 in Pioneer Development Corporation was freely trading
2 under the grandfather clause because the stock had been
3 issued prior to 1933?
4

5 MR. WALKER: Objection, your Honor.

6 THE COURT: Overruled.

7 MR. WALKER: Could I take this at side bar?

8 THE COURT: All right.

9 (Side bar.)

10 MR. WALKER: Your Honor, my position is that this
11 is a matter that Mr. Doyle should not be permitted to go into
12 unless he is prepared to make an offer of proof, that he
13 is going to make a defense of advice of counsel in this
14 case and lay all of the foundation for advice of counsel,
15 and the fact that his client relied on advice of counsel,
16 having stated the facts properly to this witness.

17 The reason is that in this particular case it
18 is the government's belief that the facts were not set
19 forth and that the jury can be misled into thinking that
20 counsel gave some advice on the basis of an incorrect
21 statement of the facts of the situation. Specifically,
22 in this case, it was never revealed, as I understand it,
23 that the defendants, specifically Segal, in fact, Clegg,
24 had accumulated old stock for the purpose of redistribution,
25 and thereafter the stock, and the law is clear that that

jkh13

Schiffman-cross

1 kind of redistribution under SEC v. North American Research
2 requires a registration statement, and that that set of
3 facts was never put to Mr. Frasier, who is the attorney
4 for the company, and it is the government's position, and
5 it is improper for that kind of a bogus defense of advice
6 of counsel to be put forward when the requisites are not
7 going to be fulfilled, and that the jury will be misled.
8

9 MR. DOYLE: I think that is very direct, your
10 Honor. If Mr. Frasier said in the presence of Mr. Segal
11 that the stock was freely trading --

12 THE COURT: But Mr. Frasier isn't here to cross-
13 examine as to what if any facts were given to him, and
14 absent a representation on your part that you are going
15 to rely on that defense, I think counsel is right.

16 MR. DOYLE: Your Honor, I do have a defense of
17 good faith which Mr. Frasier's advice is part, as part
18 of my evidence of a good faith defense, so that --

19 MR. NEWMAN: We all do, your Honor.

20 THE COURT: I understand your point.

21 MR. NEWMAN: This is a question of fact for the
22 jury, whether or not these people wilfully believed that
23 they were doing wrong or they really believed that the
24 stock could be traded.

25 THE COURT: No, they don't have to know they are

jkh14

violating any law. It has got nothing to do with this intent or wilfulness, nothing.

MR. WALKER: Your Honor, the government's position would be that the defense be precluded from this line of inquiry during the government's direct case and that if they wish to put forward a defense of advice of counsel they have an appropriate time to do so in the defense's case, and at that time they can make whatever offers of proof they think are necessary.

THE COURT: I will rule on it in the morning. Give me a memorandum -- both of you.

(In open court.)

THE COURT: We will adjourn now until tomorrow morning, 10 o'clock. Please be prompt because if you are not, we are going to have to pay for it, including me.

Don't talk about the case. Don't let anybody talk about it with you.

Counsel remain a moment.

(Jury left the courtroom.)

THE COURT: I would like memoranda on the point just raised. You don't need to be lengthy -- one page, a couple of cases, and I'd like it in my chambers in the morning.

MR. WALKER: Very well, your Honor.

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1 jkh15
2 THE COURT: At 9 o'clock.

3 MR. WALKER: Your Honor, since this is what the
4 government concedes to be a very --

5 THE COURT: Wait a minute. I am not through. I
6 have a couple of other things I want.

7 I also want memoranda on Mr. Winograds point
8 last night, his argument that he is being deprived of
9 exculpatory testimony of a co-defendant. And I want a memo-
10 randum from you on McCarthy.

11 MR. WALKER: Very well, your Honor.

12 THE COURT: Whether that is a waiver, and I would
13 appreciate if you would repeat what you represent or indicate
14 in the record where it is. I have the record.

15 MR. WALKER: Very well, your Honor.

16 THE COURT: All right?

17 MR. KIRSCHNER: We have raised the same issue
18 on behalf of Mr. Zuber, that Mr. Winograd has raised on
19 behalf of Mr. Levine, with respect to the severance and use
20 of exculpatory testimony of co-defendants.

21 THE COURT: All right.

22 MR. WALKER: Your Honor, I would like to make a record.
23 I think it would be helpful to the court if we made a
24 record out of the presence of the jury as to what this
25 witness would testify; one or two questions on this issue.

jkh16

Schiffman

THE COURT: All right.

MR. WALKER: Shall I ask the questions?

MR. DOYLE: No, I will ask the questions.

MR. WALKER: If I may be permitted to cross.

EXAMINATION BY MR. DOYLE:

Q Mr. Schiffman, what did Mr. Frasier say on that occasion to the best of your recollection?

A Well, I was asked to discuss with him the fact of whether or not the stock could be freely traded without the filing of a registration statement, and when I asked him what his opinion was of it, he explained the grandfather company situation to me, pre-1933. I did not know that much about it at the time. And he said that in his opinion stock could be traded in the over-the-counter market without registering, without going through a registration statement, because it fit into that exemption.

Q Was Mr. Segal present when he made those statements?

A Yes.

MR. DOYLE: Your Honor, that is the testimony.

MR. WALKER: All right, may I just ask a few questions?

THE COURT: All right.

BY MR. WALKER:

Q Mr. Schiffman, was Mr. Frazier ever told, in your

jkh17

Schiffman

1 jkh17 Schiffman
2 presence, of a plan whereby stock, control stock of
3 approximately 200,000 shares would be collected and a
4 percentage of approximately 50 per cent of that stock would
5 then be distributed to the public in connection with the
6 conversation that you have just talked about?

7 A Was he told that in my presence?

8 Q Yes.

9 A No.

10 Q Were you ever aware of the fact that a large
11 quantity of control stock was going to be distributed to
12 the public?

13 A No.

14 Q So did the conversation that you had with
15 Mr. Frasier relate simply to the fact of the trading of
16 existing shares that were in the hands of people who had
17 purchased the stock some time in the past, prior to 1933?

18 A Essentially, yes.

19 MR. WALKER: I have no further questions.

20 THE COURT: I might save you writing a memorandum
21 of law, but you are still free to do it, but it is my under-
22 standing if you rely on advice of counsel, there must be
23 a showing that you fully disclosed all relevant and pertinent
24 facts to counsel and absent that foundation, I don't see
25 that this line you are pursuing is proper. If you can

1 jkh 18

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2 convince me to the contrary by morning, I have an open
3 mind.

4 MR. DOYLE: Yes, your Honor, I would like to do
5 it in a memorandum.

6 THE COURT: I have so charged juries for 15 years
7 in this court, and I think I am right.

8 MR. DOYLE: Yes, we would like to do a memorandum
9 on that point, your Honor. Thank you.

10 THE COURT: All right.

11 MR. WALKER: Nothing further, your Honor.

12 THE COURT: Good night.

13
14 (Adjourned to 10 A.M., December 4, 1974.)
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1
2 UNITED STATES OF AMERICA
3 vs.
4 HOWARD FINKELSTEIN, et al.

5 December 4, 1974,
6 10 A.M.

7 --

8 (In the absence of the Jury.)

9 MR. WALKER: Your Honor, I apologize for not
10 delivering the memoranda as promptly as the court wanted.
11 When we got to the steno pool late last night they were
12 very busy and we gave them the one the court needed most.

13 THE COURT: I know your problem.

14 Now, why is this not hearsay?

15 MR. DOYLE: Your Honor, it is in the presence
16 of the defendant.

17 THE COURT: How does that remove it from hearsay?
18 He is not a co-conspirator; he is not a defendant.

19 MR. DOYLE: Your Honor, let me address myself to
20 the argument we made in our brief.

21 THE COURT: I read your brief. I am not convinced
22 that you are right, but it seems to me that it is hearsay.

23 I suggest you listen to the argument, Mr. Walker,
24 because you are going to be on your feet in about a minute.

25 MR. DOYLE: How do we prove Mr. Segal's state of
mind without proving what was said to him?

2 THE COURT: And this has to do with Frasier's
3 state of mind, not Segal's.

4 Mr. DOYLE: But Segal was at the meeting and
5 Frazier said the stock could be legally traded. I think
6 any witness to the conversation can testify as to what was
7 said. He is not going to be cross-examined about the
8 validity of his opinion. What did he say to Segal? Anyone
9 who heard it can testify to it. It is testimony to a
10 specific event. It is really being offered for the fact
11 of its communication to the defendant to establish the
12 defendant's state of mind.

13 THE COURT: Not for the truth of it? Is that
14 what you are saying? That it comes in as an exception
15 to the hearsay rule, state of mind exception?

16 MR. DOYLE: That's what we are talking about, I
17 think. We are talking about the impact on my client's
18 state of mind made by a decision, so I think in that sense
19 it is not being offered for its truth.

20 THE COURT: What do you say, Mr. Walker?

21 MR. WALKER: First of all, I think it is coming
22 in for the truth, whether Mr. Doyle asserts it or not. No
23 limitation can be placed on this which would clarify the
24 issue for the jury. Secondly, I think it is erroneous for
25 Mr. Doyle to assert, and this essentially goes back to the

argument I made yesterday, somehow a good faith or state of mind exception to the hearsay rule at this stage of the proceedings.

THE COURT: I don't see that this stage of the proceedings has a thing to do with it. Either it is hearsay or it is not.

MR. WALKER: It is the government's position it is hearsay.

THE COURT: Why?

MR. WALKER: It is being offered by Mr. Doyle for the truth of the contents.

THE COURT: He says he is only offering it for the fact that it was said. Suppose the answer is yes, which I anticipate it will be, why isn't it perfectly competent evidence for the fact that it was said in the presence of this defendant, not for the truth of the fact of what was said, but to show that he did not honestly believe he was part of the scheme, like Middleman in the Crosby case, not that he was closing his eyes to the facts or that he was insincere, but for the fact that he said it.

MR. WALKER: Your Honor, the problem is that one cannot divorce the mere words of what Mr. Frazier said from Mr. Segal's overall state of mind, and it is the government's position that Mr. Frazier if he made that

2 statement was misled by Mr. Segal, and there is no way we
3 can bring that out without Frazier here to testify, there
4 is no way we can bring out the fact that while Mr. Frazier
5 may have said it, he may have been misled in saying it.

6 THE COURT: Assume that he was, that would go to
7 the truth of what he said, the objective truth of what he
8 said, but not to the fact that he said it. I am going to
9 overrule the objection.

10 MR. SIFFERT: May I make one point. As I under-
11 stand the case in which Judge Herlands was affirmed, the
12 Dardi case, the court stated that the advice of counsel is
13 relevant to good faith, but it is relevant only to the
14 extent that the facts are fully and honestly laid before
15 the lawyer who gave the opinion. It is the government's
16 position that the relevance of what Mr. Frazier might have
17 said exists only to the extent that Frazier was told fully
18 and honestly all the facts. Now, we cannot tell from what
19 Mr. Schiffman testified to as to what Mr. Frazier said,
20 the facts that Mr. Frazier was in position of when Mr.
21 Frazier spoke, and it is the underlying facts which are
22 really relevant and would undercut any possible defense.

23 THE COURT: But he offers it as evidence of the
24 fact that it was said, bearing on his client's state of mind
25 and also as evidence of whether this was a controlled group.

2 MR. SIFFERT: I would submit, your Honor, that
3 it is relevant to the state of mind and good faith only
4 to the extent that it would be relevant to advice of counsel.

5 THE COURT: I don't agree, because supposing I
6 had not been a lawyer, it would be equally relevant. He
7 doesn't have to be a lawyer for the fact that the statement
8 was said in his presence. He could have been the janitor.

9 MR. SIFFERT: What underlies that statement, the
10 reasons for that statement is what is relevant to that
11 defense in the first place, what Mr. Frazier was told and
12 what he knew.

13 THE COURT: No, it is what Mr. Segal was told and
14 what he knew that we are looking at. Overruled.

15 MR. WALKER: Your Honor, I would assume that the
16 government will take the position that on redirect of this
17 witness--

18 THE COURT: Let's cross that bridge when we come
19 to it. Take what position you think you should take. I
20 will rule on it when it goes over the plate.

21 MR. DOYLE: May we proceed, your Honor?

22 THE COURT: Yes, let's get the jury.

23 (Jury in box.)

24 THE COURT: Good morning. Someone was late again.

25 We will have to sit a while longer tonight to make up for

1 mmh Schiffman-cross

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2 that. Proceed.

3 MR. WALKER: We recall the witness, Mr. Schiffman.

4

5 S T U A R T S C H I F F M A N, resumed.

6 CROSS EXAMINATION CONTINUED

7 BY MR. DOYLE:

8 THE COURT: Read the last question of yesterday.

9 (The reporter read as follows:

10 "Q Now, at some time during the conversation at
11 which Mr. Frazier was present, did he not say that the
12 stock in Pioneer Development Corporation was freely trading
13 under the grandfather clause because the stock had been
14 issued prior to 1933?"

15 THE COURT: I overrule the objection.

16 THE WITNESS: Yes, he said that the stock was
17 trading, I believe, in the over-the-counter market under
18 the grandfather exemption to registration.

19 Q Now, with respect to your testimony on direct
20 examination about the preparation of a type of financial
21 statement by the gentleman representing the company with
22 the Far Eastern interests, the air strip proprietor, the
23 financial statements that you testified about that were
24 shown to you at that meeting were not part of the due
25 diligence file that you referred to?

1 mmh

Schiffman-cross

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2 A I don't believe so, no.

3 Q In fact, the due diligence file was delivered
4 to you wholly independently of the meeting that you had
5 in Los Angeles by Mr. Torres, who was an employee of Mr.
6 Segal in New York City? Isn't that correct?

7 A That is correct.

8 Q Can you describe, sir, your recollection of the
9 due diligence file as to its contents concerning what was
10 in it to the best of your recollection?

11 A Well, there was a report on the mine, mercury
12 mine, I believe it was, and there was some information
13 and financial statements on a company, Precision something
14 or other, Precision Power or something like that.

15 Q Do you recall what the physical appearance was
16 of the due diligence file?

17 A You mean how large it was?

18 Q Yes.

19 A Well, the mining report was, oh, maybe an inch,
20 an inch and a half thick, and the rest of it was another
21 quarter of half an inch.

22 Q Was it enclosed in any type of binder to your
23 recollection?

24 A The whole thing?

25 Q Yes.

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Schiffman-cross

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2 A No, the mining report was in a binder. The
3 rest of it came-- well, it was all put into a manila
4 envelope.

5 Q When and where was the last time that you saw
6 the due diligence report?

7 A The full thing?

8 Q Yes.

9 A Well, when I gave it to Azzerone was the last
10 time I had actually looked at it.

11 Q Have you seen it since that time?

12 A I have seen the mining report.

13 Q Only the mining report?

14 A Yes.

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Schiffman-cross

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1 Q Mr. Schiffman, showing you Government's Exhibit
2 6-B in evidence, would you examine that, and after examining
3 it, would you tell the Court and jury, whether to the
4 best of your recollection, that is the mining report that
5 you saw in the due diligence file?
6

7 A Yes, it is.

8 Q You do recognize it?

9 A Yes.

10 Q Thank you.

11 Now, directing your attention to your testimony
12 on direct examination concerning your visit to Mr. Azzerone
13 at Karen Securities, and your delivery of the due diligence
14 file to him and your conversation about Karen Securities
15 opening the Pioneer Development Corporation stock at \$5
16 bid and \$6 asked, at the time that that event occurred,
17 did you believe that you were doing anything illegal?

18 MR. WALKER: Objection. It is irrelevant.

19 THE COURT: Sustained.

20 Q At or about the time that that event occurred,
21 either before or after it, did you say anything to Mr.
22 Segal to the effect that that transaction was illegal?

23 MR. WALKER: Objection. There is no foundation
24 laid for the conversation.

25 THE COURT: Sustained.

1 jks

Schiffman-cross

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2 Q At or about the time of the transaction with
3 Karen Securities, were you Mr. Segal's attorney?

4 A Yes.

5 Q And did you have frequent conversations with
6 Mr. Segal concerning legal matters at that period of time?

7 A Yes.

8 Q And were you acting, at least in part, in a
9 legal capacity in conveying this information and this
10 request to Karen Securities as you described it on direct
11 examination?

12 A In part.

13 Q In part.

14 At any time during your performance of that
15 legal service, did you ever make any statement to Mr.
16 Segal, directly or indirectly, to suggest to him that there
17 was anything illegal or improper about the transaction at
18 Karen Securities?

19 MR. WALKER: Objection as to form.

20 THE COURT: Overruled, if you will knock out
21 "suggest".

22 MR. DOYLE: Yes.

23 THE WITNESS: Could I have the question reread?

24 THE COURT: Did you ever tell him there was any-
25 thing illegal about the transaction?

1 jks Schiffman-cross

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2 THE WITNESS: No.

3 Q Thank you.

4 Now, directing your attention to the National
5 Quotation Bureau application that you testified you filled
6 out and gave to Mr. Azzerone, and specifically to the entry
7 on page 2 of the application, the answer to question 1,
8 "grandfather corporation prior to 1933," in inserting that
9 statement, were you relying upon the statement made to
10 you by Mr. Frasier in Los Angeles?

11 MR. WALKER: Objection. I don't think a found-
12 ation has been laid.

13 THE COURT: Sustained.

14 Q In inserting that statement, what were you rely-
15 ing on?

16 A Basically my conversation with Mr. Frasier and
17 some very minor research that I had done after that.

18 Q Now, at the time you prepared this application
19 to the National Quotation Bureau you were aware of the fact
20 that it includes on his face an authorization for its
21 contents to be disclosed to the Securities and Exchange
22 Commission or any other regulatory body, were you not,
23 sir?

24 A Yes.

25 Q Now, directing your attention to Pioneer

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1
2 Development Corporation stock and to the period after the
3 transaction at Karen Securities that you have described,
4 did you continue to have frequent conversations with my
5 client, Alan Segal?

6 A Yes.

7 Q And were they both in person and on the tele-
8 phone?

9 A Yes.

10 Q And were they both in connection with the per-
11 formance of legal services and also in connection with the
12 business transaction and services that you described on
13 direct examination?

14 A That's correct.

15 Q Did there come a time during the course of these
16 conversations when Mr. Segal expressed to you his view that
17 he thought Pioneer was a very good company?

18 A Yes, it did.

19 Q In fact, didn't you, Mr. Schiffman, purchase
20 some Pioneer Development Corporation securities in the fall
21 of 1969?

22 A Indirectly, in that it was purchased under some-
23 body else's name.

24 Q Would you describe how that was done, to the best
25 of your recollection.

1 jks

Scullman-cross

2 A Well, a friend of mine purchased the stock and
3 he put up the money and we were to share in the profits and
4 the losses.

5 Q And how many shares did you purchase, sir?

6 A I don't recall. It was no more than a thousand
7 probably somewhere between five hundred and a thousand.

8 Q And is it not also a fact that your cousin, a
9 Mr. Saltzman, purchased Pioneer Development Corporation
10 stock?

11 A That's correct.

12 Q At this period of time.

13 And did you have any communications with your
14 cousin that led to that purchase?

15 A Yes, certainly.

16 Q You recommended the stock to him?

17 A Yes.

18 Q Now, directing your attention to December 1969
19 and January 1970, did Mr. Segal advise you that during
20 that period of time he had commenced to purchase additional
21 shares of Pioneer Development Corporation?

22 A Yes.

23 Q Do you ever recall Mr. Segal's asking your
24 advice about the problem of when a broker sells the wrong
25 security as a result of a misunderstanding with a client?

jks

Schiffman-Cross

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1 if a client asks a broker to sell a hundred shares of
2 company X and the broker misunderstands the order and offers
3 to sell a hundred shares of company Y, what the broker would
4 do in those circumstances?

5
6 THE COURT: Sustained.

7 MR. WALKER: Objection.

8 THE COURT: The form of the question.

9 Q Do you remember Mr. Segal ever raising with
10 the problem of what would happen if a different Pioneer
11 were ordered by a broker from what his customer ordered
12 the broker to sell; do you recall that subject matter
13 coming up at all during late 1969 or early 1970?

14 A Something like that, yes.

15 Q You do recall that.

16 And do you recall telling Mr. Segal in response
17 to that, that the broker would have to go out into the open
18 market and purchase the security that he had in fact offered
19 to sell to another broker-dealer, even though his customer
20 had had in mind another security?

21 MR. WALKER: Objection, your Honor. I don't
22 see the relevancy of this.

23 THE COURT: Sustained. The form of the question
24 again. It is very compound and confusing.

25 MR. DOYLE: I can't hear your Honor.

jks

Schiffman-cross

THE COURT: It is compound and confusing.

See if you can break it down.

Q Do you recall what your explanation to Mr. Scott was in connection with that problem?

A Well, if I recall, he asked me what would happen if a broker bought a security, in other words, he was ordered to buy X security and -- or sell X security, and he sold Y security by mistake and tried to deliver Y security, he would have to go out and buy X security to make good on his sale.

MR. WALKER: Your Honor, objection. I move to strike it. I don't think it bears any relation to this case.

MR. DOYLE: Your Honor, I am offering it subject to connection.

THE COURT: I will take it subject.

MR. DOYLE: Thank you.

Q Now, you testified, Mr. Schiffman, about your acting as president of Kelli, Jackson & Scott: is that correct?

A That's correct.

Q And was Kelli, Jackson & Scott a corporation validly incorporated under the laws of New York State?

A I'm not sure. I recall that it was.

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Schiffman-cross

33

Q Who was the sole shareholder, to your knowledge?

A To my knowledge, Mr. Segal.

Q Mr. Segal. And the company was named after his three daughters, wasn't it, Kelli, Jackson & Scott?

A Well, the Kelli I think was, but I don't know where the Jackson and Scott came from.

Q You don't know about the Jackson and Scott.

I show you Defendant Segal's Exhibit H for identification and ask you whether you can identify that as a check you signed.

A That is my signature.

MR. DOYLE: Thank you.

Your Honor, I offer it in evidence.

MR. WALKER: No objection.

THE COURT: Received.

(Defendant Segal's Exhibit H was received in evidence.)

Q Now, Kelli, Jackson & Scott was referred to as a nominee corporation on direct examination, and you also referred to Francine Bahl, Mr. Segal's secretary, in whose name the account at Eren Securities was opened.

Now, with respect to the use of nominees by Mr. Segal, did Mr. Segal in the fall of 1969 explain to

1 jks Schiffman-Dr. 135

2 you that he used nominees because of the problem of claim
3 of creditors that might levy against assets in accounts
4 under his own name?

5 A Yes.

6 Q Thank you.

7 Now, directing your attention to the loan trans-
8 actions that you testified about on direct examination
9 and to your relationship with Mr. Segal at or about the
10 time that those transactions were effectuated, referring
11 to the initial taking out of the loan when some other
12 security was put in as collateral, and then to the addition
13 of Pioneer Development Corporation securities about a
14 month later, as I recall in each case, were you acting as
15 Mr. Segal's attorney during that period of time?

16 A Yes, I was.

17 Q And you had frequent conversations with Mr.
18 Segal in a legal capacity at or about the time of those
19 transactions?

20 A That's correct.

21 Q Did you say anything to Mr. Segal directly
22 indirectly, to the effect that there was anything illegal
23 or improper about any aspect of those loan transactions?

24 MR. WALKER: Objection.

25 THE COURT: Overruled.

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Schiffman-cross

1 A Not that I can recall.

2 Q Now, with respect to one of the loans, Mr.
3 Segal later guaranteed one of them personally, did he not
4
5 sir?

6 A I think the one at the bank in Waltham.

7 Q Is that your best recollection?

8 A Yes.

9 Q And at the time that you were sued in connect
10 with those loans you, in fact, owed a substantial amount
11 of money to Mr. Segal isn't that correct?

12 A Oh, about -- well, at that time I don't know
13 what the exact amount was, but it was probably around
14 \$20,000.

15 Q 20,000?

16 A Well, there had been more loans, but a lot of
17 them had been reduced. It was back and forth.

18 Q I see.

19 During the fall of 1969 do you know, as a result
20 of your conversations with Mr. Segal, that he was endeavor-
21 ing to sell his interest in the Riverside Hotel during that
22 period of time?

23 A Yes, he was.

24 MR. WALKER: Your Honor, I move to strike that.
25 It has to be hearsay

jks

Schiffman cross

THE COURT: Sustained. Strike it.

MR. DOYLE: May I have one moment, your Honor?

(Pause.)

MR. DOYLE: No further questions, your Honor.

MR. GREENBERG: We have no questions on behalf of Mr. Suber.

MR. WINOGRAD: No questions on behalf of Mr. Levine.

MR. NEWMAN: No questions on behalf of Mr. Finkelstein.

MR. PAPE: I have only two brief questions, your Honor.

CROSS EXAMINATION

BY MR. PAPE:

Q Mr. Schiffman, you have testified here today that you relied upon a statement made to you by a man named Mr. Frasier concerning the grandfather clause, is that right?

MR. WALKER: Objection. It wasn't his testimony.

THE COURT: I don't recall that that was his testimony.

Q You have testified here as to a statement --

THE COURT: Let's have your question. You don't

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Schiffman-cross

need to summarize his testimony.

Put your question.

Q The question, Mr. Schiffman is, was that Mr. Frasier an attorney at the time?

A He represented to be. Other than that, I don't know if he was or wasn't.

Q As far as you know, he was an attorney?

A As far as I know he said that he was an attorney.

Q Have you learned anything to the effect that he was not an attorney?

MR. WALKER: Objection. May we have time and place? Objection.

Q Since that time?

THE COURT: Overruled.

A No, I haven't.

Q And he was the attorney as far as you knew for Pioneer Development?

MR. WALKER: Objection.

Q Is that right?

MR. WALKER: Repetitive.

THE COURT: I will sustain it on the ground that the foundation has not been laid for the defense which you seek to assert through that.

MR. PAPE: I have no further questions, your

1 jks Schiffman Redirection

2 Honor.

3 REDIRECT EXAMINATION

4 BY MR. WALKER:

5 Q Mr. Schiffman, with regard to this conversation
6 that you have testified to at the Century Plaza, was there
7 any representation made, in your presence, to Mr. Frasier
8 that stock had been accumulated from all shareholders
9 and was to be redistributed to the public at the time that
10 he made that statement that you testified to on cross-
11 examination?

12 A No.

13 Q Was there any conversation or any discussion
14 about any planned distribution of stock by the officers
15 and people in control of the company to the public at that
16 time?

17 A No.

18 Q You were asked on cross-examination as to Seale's
19 use of the nominee corporation of Kelli, Jackson & Scott.
20 Did you discuss with him in that connection
21 any basis other than the one you have testified to as to
22 why he would use a nominee corporation?

23 A Did I discuss with him any other basis for --

24 Q Yes, were you aware of any other basis?

25 MR. DOYLE: Your Honor, I think the proper question is --

jks

tion is did he discuss not whether or not there.

THE COURT: Overruled.

A Other than the creditors?

Q Yes.

A Not that I can recall right now.

MR. WALKER: Could we mark this document 131.

(Government's Exhibit 131 was marked for identification.)

Q Mr. Schiffman, I show you Government's Exhibit 131 for identification and ask you to examine that document closely and ask you if that refreshes your recollection concerning the last question put to you?

A I believe I knew about this at the time, yes. I'm not sure whether we ever discussed this in relationship to the nominee, Kelli, Jackson & Scott, you know, far as my being the nominee for Kelli, Jackson & Scott.

Q Did you ever discuss this with Mr. Segal?

A He had mentioned it to me, yes. We never went into too much detail about it, but I had some knowledge of this.

Q What is your best recollection as to what he said concerning that document?

MR. DOYLE: Your Honor, may we approach the side bar?

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See ifman-... ..

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THE COURT: Let me see the document so it won't be such a mystery.

(Handed to Court.)

THE COURT: I don't see any need so. It is the point you raised for trial.

All right.

MR. WALKER: May I proceed, your Honor?

THE COURT: Yes.

Q What was the conversation that you had with Segal?

A Well, at one point during our relationship he had mentioned to me that at one time he had had a problem with the SEC as far as the brokerage company goes, that he had some interest in.

Q Did he specify it in any more detail?

MR. DOYLE: Your Honor, just to make the record clear, I am objecting to this question and this line of questioning.

THE COURT: I overrule him. You opened the door.

MR. DOYLE: Thank you.

A Never really went into too much detail about you know, what it was about or what the problem was really about.

jks

See Hoffman-Admiral

34

MR. WALKER: Your Honor, at this time the Government offers 111 for identification into evidence. It is a certified copy.

MR. LOYLE: Your Honor, I object, please.

THE COURT: Sure.

MR. DOYLE: Your Honor, I object to it on the grounds that the testimony was not that this document was discussed with the witness, but only that a very general subject matter was discussed as to which no detail was entered into and, secondly, the prejudicial nature of it.

THE COURT: Overruled.

(Government's Exhibit 111 was received in evidence.)

MR. WALKER: Your Honor, may I read the contents?

THE COURT: Yes.

(Mr. Walker read from Government's Exhibit 111 to the jury.)

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Schiffman-redirect

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Q Now, Mr. Schiffman, did you have any conversation with Mr. Segal concerning this injunction by the State Attorney General in 1959 barring him from engaging in any securities transactions within the State of New York at any time?

MR. DOYLE: Objection, your Honor.

THE COURT: Overruled.

A Well, we had discussed the fact of this injunction as I said, in a limited way at various times.

Q Did you have any discussion with Mr. Segal concerning any violations of that injunction that had occurred in the early '60s?

MR. DOYLE: Objection, your Honor.

THE COURT: Sustained

And, again, I want to caution the jury that counsel's questions are not evidence.

Q You stated that you entered into an arrangement with three individuals, two other individuals and yourself, for the purchase of Pioneer stock?

A Correct.

Q Whose name was that stock to be held in?

A I believe Mr. Palermo was one of the gentlemen. I believe it was bought in his wife's name.

Q Was that purchase made by you on the recommendation

1 mmh2 Schiffman-redirect 344
2 of Mr. Segal? Parker-direct

3 A In a sense, yes.

4 MR. WALKER: I have no further questions.

5 MR. DOYLE: No questions, your Honor.

6 (Witness excused.)

7 MR. SIFFERT: The government calls John Parker.

8

9 J O H N P A R K E R, called as a witness, having been
10 duly sworn, testified as follows:

11 DIRECT EXAMINATION

12 BY MR. SIFFERT:

13 Q What is your current occupation?

14 A I am a rancher.

15 Q In the fall of 1969 how were you employed?

16 A I was a registered representative with Hornblower
17 & Weeks.

18 Q Could you tell the jury what a registered representa-
19 tive is?

20 A We bought and sold securities on a retail basis.

21 Q At the time that you were employed at Hornblower
22 & Weeks, where was that?

23 A In Denver, Colorado.

24 Q Was there a bank in the same building?

25 A American National Bank was on the ground floor.

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marker-direct

Q Did you know a man by the name of George Parris?

A I sure did.

Q Was he a customer of Hornblower & Weeks?

A Yes.

Q Directing your attention to about November 8th did there come a time where Mr. Parris brought in some stock and asked you to sell it for him?

A Yes.

MR. PAPE: Objection, your Honor, leading and cumulative.

MR. SIFFER: I can rephrase that, Judge.

Q I show you Government's Exhibit A and ask if you can identify it.

A This would be the stock certificate, yes, 5,000 shares.

Q Did Mr. Parris bring this to you?

A I believe he did.

Q Prior to that did he ask you to issue him a check?

A Yes.

MR. NEWMAN: Objection as hearsay.

THE COURT: Sustained.

Q When he delivered this check to you what date did he deliver it to you?

A You mean the stock cert date?

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Parker-direct

Q Yes.

A I presume it was on settlement day. I really don't know.

Q I show you Government's Exhibit 20A in evidence and ask if that refreshes your recollection on the date.

THE COURT: Does it refresh your recollection on the date? Either yes or no.

THE WITNESS: Which date are you talking about?

THE COURT: The date that the stock certificates were brought in.

Q On the upper left-hand corner of that show the receipt?

A Yes.

Q That shows a receipt of 3,000 shares on the 12th?

A That is correct.

Q Did you issue a check to Mr. Parris for this check?

A Yes, we did on November 12th.

Q I show you Government's Exhibit 21 in evidence and ask if that is the check.

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A This is the check.

Q Directing your attention now to mid-November of 1969 did there come a time that you sold more Pioneer stock?

A Yes.

Q I show you Government's Exhibit 30 for

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Parker-Direct

identification --

THE COURT: Isn't this all cumulative, Mr. Siffert?
We have all this evidence in.

MR. SIFFERT: Some of it is not.

THE COURT: Let's get to the part that is not.

Q I show you Government's Exhibit 20-C for identification and ask if you can identify that.

A This is my account sheet. That verifies the actual sales of the stock.

Q Does 20-D in evidence reflect that 18,000 shares of Pioneer were delivered to your office in mid-November?

A That is correct.

Q Was 30-C for identification, your work sheet prepared by you in the ordinary course of business?

A Yes.

Q Was it the ordinary course of business to prepare such a work sheet?

A Yes.

MR. SIFFERT: I offer this in evidence.

MR. PAPE: We have no objection, your Honor.

(Government's Exhibit 30-C received in evidence.)

Q Does that reflect sales by you on the McKibben account at Hornblower & Weeks?

A Yes.

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Q Could you read the sales to the jury?

A On December 15, 1969, we sold 11,000 shares at four different prices -- five different prices.

On the 16th of December of 1969 we sold 1,600 shares, and on the 17th I sold 1,300 shares -- 3,900 total.

Q 13,900?

A I mean, 13,900, right.

Q Referring to 20-D in evidence, does that reflect a check as having been issued and in 21-D the check?

A That is the check.

Q Now, 20-D in evidence shows that 12,000 shares were delivered on the McKibbin statement and 13,900 is reflected to have been sold out of the account. That is a 4100 shares? Is that correct?

A That is correct.

MR. PAPE: Objection. He is reading the witness.

THE COURT: It is nothing but arithmetic. Overruled. Is that right?

THE WITNESS: Yes, sir, that is correct.

Q Do you recall what happened to that 4,100 shares?

A Yes, Mr. McKibbin called me and wanted me to sell the remainder of the stock, 4,100 shares, to a Mr. Zubor. I believe he said.

Q I show you 20-D for identification and ask

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Pamela-direct

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1 if you can identify it.

2
3 A 30-D would be my own notation at my desk to
4 send the 4,100 shares to Edward Zuben.

5 THE COURT: Is that Z-u-b-e-n?

6 A I wrote Zuben -- Z-u-b-e-n.

7 THE COURT: Could that be an "n" instead of an
8 "n"?

9 THE WITNESS: It looks like an "n", sir.

10 THE COURT: Zuben.

11 Q Was that prepared by you in the ordinary course
12 of business?

13 A Yes.

14 Q Was it the ordinary course of business to prepare
15 the document?

16 A Yes.

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17 MR. SIFFERT: I offer it.

18 MR. DOYLE: No objection.

19 MR. KIRSCHNER: One moment, please, your Honor.
20 I object on the grounds there is no proper foundation.

21 MR. SIFFERT: It is a business record, your Honor.

22 THE COURT: All right.

23 (Government's Exhibit 30-D received in evidence.)

24 Q I show you Government's Exhibit 30-E and ask
25 if you can identify it.

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2 A 30-E pertains to the note, our conversation note
3 between Mr. McKibben and myself. I told him I could not
4 send the stock to another party other than himself unless
5 I had that in writing and he sent this to me in writing,
6 and this is 30-E stating that I should send 4,100 shares
7 to Mr. Zuben at that address.

8 Q On 30-D? What is the address on 30-D?

9 A 3723 Yucan Costa Mesa, California.

10 Q Was 30-E received by you in the ordinary course
11 of business?

12 A Yes.

13 Q Was it the ordinary course of business for you
14 to receive this kind of letter?

15 A It was firm policy.

16 MR. SIFFERT: I offer this in evidence, 30-E.

17 MR. KIRSCHNER: Objection as to foundation and
18 hearsay again.

19 THE COURT: You have not laid the basis for a
20 business record.

21 All of these papers you have identified were
22 made in the regular course of business of Hornblower &
23 Weeks, its Denver office?

24 THE WITNESS: Yes.

25 THE COURT: Was it a part of the business of

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Southern District of Colorado

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Hornblower & Weeks to keep with the

THE WITNESSES: Yes.

THE COURT: Did you keep with them at the time of the transactions?

THE WITNESSES: Yes.

THE COURT: Overruled.

(Government's Exhibit 30-B received in evidence)

MR. KIRSCH: Your Honor, may we see the original of that for a moment?

Q When you received 30-B what did you do?

A I went back to our office and instructed the cashier to send the 100 shares to a U.S. Marshal at the address.

Q Do you have in front of you 20-A?

A No, I don't.

Q Referring to 20-A and D--

Excuse me, Your Honor --

Q Showing you Government's Exhibit 30-C in evidence, these are all account statements of Robbins, Parris and Scardino and they are all account statements in the Denver branch? Is that correct?

A That is correct.

Q Were all the transactions which are recorded sales in the Denver branch and all the shares invol

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1 mch10

2 the use of interstate wires from Denver to New York?

3 A Yes, sir.

4 Q With respect to any of these transactions was
5 there ever an arrangement whereby Hirschman & Weeks
6 would lend money based on the securities?

7 A No, sir.

8 Q Was such a loan arrangement ever discussed with
9 McKibben or Scardino?

10 A I don't believe so.

11 Q Did any of these people ever discuss the proceeds
12 of these checks?

13 MR. PARE: Objection. He has not verified
14 who any of these people are.

15 THE COURT: Sustained.

16 Q Did Mr. Scardino or Mr. McKibben or Mr. Farrel
17 ever discuss the proceeds of these checks, where they were
18 be put?

19 A No, sir.

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Parker-Direct

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MR. SIFFERT: Could you mark this Government Exhibit 21-D. That is in evidence, but we don't have the original here.

You have 21-D? I'm sorry.

It's all right. I'm sorry, I withdraw that.

Q I show you 21-B in evidence and ask if you recall the circumstances of this check?

A Yes. We issued this check on December 16th to a Richard McKibben for \$79,150, and he went down to the American National Bank in the basement of our building to cash this check, and the cashier at that time and myself had to co-sign that we recognized Mr. McKibben as the holder of the check. Our signatures are on the back of that check.

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Q I show you Government's Exhibit 21-B and ask if you can identify it. Do you recall the circumstances under which that check was issued?

A Could I have my accounts?

Q I show you Government's Exhibit 21-B for identification and ask if you can identify this?

A Yes.

Q Was this prepared by you in the regular course of business?

A Yes. This was the new account form we filled out.

1 jks Packer-direct

2 out on Mr. Scardino.

3 Q And the second sheet is your work sheet?

4 A Yes, sir.

5 Q And was it the regular course of business to
6 prepare that document?

7 A Yes.

8 MR. SIFFERT: I offer it.

9 MR. PAPE: I would like to see it, your Honor.

10 THE COURT: Mr. Siffert would you show it to
11 Mr. Pape, please.

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12 (Pause.)

13 MR. PAPE: Your Honor, there are certain sections
14 that I cannot read on the Xerox copy, if I could briefly see
15 the original, please.

16 MR. SIFFERT: We just have an original copy.

17 (Pause.)

18 MR. PAPE: Your Honor, I do have an objection
19 to this that I would like to make at the side bar.

20 THE COURT: Well, if you state it in terms of
21 the rules of evidence, I don't see any necessity for a
22 side bar conference.

23 MR. PAPE: I object to this on the grounds that
24 it contains hearsay information which could be prejudicial
25 to my client.

jks

P. 100-direct

THE COURT: Let me see it.

(Handed to Court.)

THE COURT: Do you have the original?

MR. SIFFERT: No. We only have that one.

We are offering this as a business record.

THE COURT: I can't read it.

MR. SIFFERT: Well, Mr. Parker could read it to the jury, your Honor.

THE COURT: Do you have anything that is legible?

MR. SIFFERT: Your Honor --

MR. WALKER: Can we explain to your Honor at the side bar the situation?

THE COURT: All right.

(Side bar)

THE COURT: I take it it is the indecipherable writing that you say is prejudicial.

MR. SIFFERT: If this is the best evidence problem --

THE COURT: We are not talking about the best evidence problem. Please.

Can you read this to me?

MR. SIFFERT: It says, "Last information, info. 11/68," I believe that's LB but I'm not sure. I am sure he can read this.

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Parker-direct

"Usual short checks" --

MR. WALKER: "Several."

MR. SIFFERT: "PR" -- I'm not sure what that say there -- "of these usually had their report on," but I'm not sure.

It's difficult to read, your Honor, but I think Mr. Parker can read it.

THE COURT: I don't think he can. It is prejudicial. Strike it out.

MR. SIFFERT: Your Honor, then I will not offer that portion of it. We can delete that.

THE COURT: Delete that.

(Open court.)

THE COURT: The hearsay objection is overruled. The other objection will be sustained.

MR. WALKER: These two lines will be stricken

THE COURT: Yes.

(Government's Exhibit 21-B was received in evidence.)

BY MR. SIFFERT:

Q Referring back again to the check in front of you now, that is 21-B, is that correct?

A Yes.

Q That is to the amount of what?

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1 jks Parker-direct

2 A \$30,441.

3 Q Do you recall the circumstances of that check
4 being issued?

5 A I just recall that it was issued. I don't
6 think it was a prepay or anything. It was just issued in
7 the normal --

8 Q Do you recall whether the payee personally came
9 and picked up that check?

10 A This particular check I believe Mr. Scardino
11 and Mr. McKibben were present. I believe they were.

12 Q That was or about the date on that check?

13 A Yes, sir, November 19th.

14 MR. PAPE: Could we have what check he is refer-
15 ring to, your Honor?

16 MR. SIFFERT: 21-B in evidence.

17 Q Mr. Parker, can you identify Mr. Scardino if
18 you saw him today, do you think?

19 A I don't know.

20 Q Well, I ask you to stand up and look around the
21 courtroom and see if you can identify Mr. Scardino.

22 MR. PAPE: Stand up.

23 Q Well, Mr. Scardino has just stood up. Is that
24 Mr. Scardino? Is that the same man that came in?

25 A I believe so, yes, sir.

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Parker-27197

MR. SIEFERT: No further questions, your Honor.

MR. DOYLE: No questions, your Honor.

CROSS EXAMINATION

BY MR. KIRSCHNER:

Q Mr. Parker, you have no personal knowledge as to whether or not the 4100 shares was actually sent to Zuber, do you?

A You mean -

Q Physically sent.

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A It had to be.

Q That is a conclusion.

Did you actually send it yourself?

A No, sir, I did not.

Q Did you give instructions for someone to send it?

A Yes, sir.

Q Do you know that those instructions were followed?

A I assume they were.

MR. KIRSCHNER: I move to strike that, your Honor.

THE COURT: You say you assume. Do you mean in the ordinary course of your office procedures you have a practice of sending out mail?

jks

Parker-crosby

THE WITNESS: I remember taking the 4100 sh
plus the letter to send it to Mr. Kirsch, attaching them,
and then giving it to our clerk. Now, whether they saw
it or not, I can't answer.

THE COURT: Whose clerk, the mail clerk?

THE WITNESS: The mail clerk, yes, cashier clerk.

MR. KIRSCHER: Thank you.

I have no further questions.

MR. NEWMAN: I have no questions of the witness.

THE COURT: Will you be gone? It is about
recess time. If it is short we will go on. If it
long we will wait.

MR. PAPE: About five minutes.

THE COURT: All right.

CROSS EXAMINATION

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BY MR. PAPE:

Q In November of 1969, Mr. Parker how long had
you been employed as a stockbroker?

A Four years, I believe.

Q Four years?

A Four years, yes, sir.

Q And when did you leave Homebrew Weeks?

A 1970.

Q Do you remember what time in 1970?

1 jks

2 A I believe it was December.

3 Q So it was fairly shortly after all these trans-
4 actions took place, is that right?

5 A About a year, I'd say, yes.

6 Q How well did you know Mr. Harris?

7 A Not very well. I had met Mr. Harris on two
8 occasions, I believe. He was a former account from
9 Tucson, Arizona.

10 Q So you didn't know him well?

11 A No, sir.

12 Q How well did you know Richard McKibben?

13 A I didn't know him either.

14 Q When did you first meet Richard McKibben?

15 A I believe the day he picked up the check for
16 first transaction, his first transaction.

17 Q And about when would that be?

18 A If I could look at my records I could tell
19 you.

20 Q Well, would it be in the fall of 1969?

21 A Yes, sir.

22 Q Now, it has been over five years, hasn't it?

23 A Yes.

24 Q I am sure that your memory is a little bit
25 on some of these matters, is it?

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2 A I can remember the traffic very clearly.
3 There was only three roads.

4 Q Do you know where Richard [redacted] is now?

5 A No, sir, I do not.

6 Q How long has it been since you have seen him?

7 A Five years

8 Q Did you know that during the period that the
9 trades were being made that Richard L. Fisher had a power
10 of attorney from Anthony Scardino?

11 A No. I didn't know that, sir.

12 Q Do you remember that there was a check endorsed
13 by Richard McKibben with power of attorney? Does that
14 ring a bell?

15 A A Hornbl. r & Weeks check

16 Q Right. If you don't remember it, just say.

17 A I could remember it probably if I looked at
18 check.

19 Q I am just asking if you remember of your own
20 free recollection?

21 A No, sir, I do not.

22 Q Do you know what a power of attorney is?

23 A Yes, sir.

24 Q Would you please tell the jury what a power
25 attorney is?

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jks

Parker-cases

MR. SIFFERT: Objection, your Honor.

THE COURT: Sustained.

Q Is it your understanding, Mr. Parker, that a power of attorney enables the person to whom --

MR. SIFFERT: Object, your Honor. He is now putting it in question form.

MR. PAPE: I am not finished.

THE COURT: Let him finish the question.

Q Is it your understanding that a power of attorney is the document that enables the person who holds it from another person to execute legal documents and that sort of thing in the name of the person from whom he holds the power of attorney?

MR. SIFFERT: I move to strike.

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THE COURT: Sustained.

If you want an instruction or law on what a power of attorney is, I would be happy to give it.

MR. SIFFERT: Will you strike the question, your Honor?

THE COURT: Yes, strike it.

Q How many times did you meet Anthony Scardino?

A I'm not really sure I even met Mr. Scardino. I think he just came in to pick up the papers. Whether he shook his hand or said hello, I really don't remember.

jks

Parker-Crook

So you really never had any conversation with Mr. Scardino and had a conversation concerning sale of stock with Mr. Scardino, did you?

A No, sir.

Q Did you ever have any such conversation with Richard McKibben?

A Well, the only conversations I had --

THE COURT: Just answer his question.

Did you ever have such conversation with McKibben?

THE WITNESS: Yes.

THE COURT: Where you discussed the sale of

Q You discussed the sale of Pioneer stock with Richard McKibben, is that right?

A Just one sale, right.

Q But you never remember discussing a sale of Pioneer stock with Mr. Scardino?

A I really - I talked to Mr. Scardino on the phone when I opened the account.

Q Just answer the question. It is called it is called of a yes or no answer Mr. Parker.

A No.

Q Do you still live out near Parker?

A Yes, sir.

Q Do you know who has a power of attorney would

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1 jks

2 in any of those files reflecting that Mr. W. Gibson had
3 a power of attorney for Anthony Scarlino?

4 MR. SIFFERT: Objection, your Honor.

5 THE COURT: Overruled.

6 A I don't know, sir.

7 MR. PAPER: No further questions.

8 THE COURT: All right.

9 We will take our morning recess at this point
10 not more than ten minutes.

11 (Recess.)

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Parker-redirect

2 (Jury in box.)

3 MR. SIFFERT: May I proceed, your Honor?

4 REDIRECT EXAMINATION

5 BY MR. SIFFERT:

6 Q You were asked whether you knew Mr. Parris and
7 you stated that Mr. Parris was referred to you from the
8 Tucson account. I asked you whether you remember how
9 Mr. Scardino was referred?

10 A I would have to look at my account sheet.

11 Q I show you Government's Exhibit 30-B1 for
12 identification.

13 MR. PAPE: I can't hear the witness.

14 THE WITNESS: I have to look at my account sheet.

15 Q I show you Government's Exhibit 30-B1 and ask
16 that refreshes your recollection.

17 A Yes, Mr. Scardino was referred by Mr. Parris.

18 Q You were asked on cross-examination whether you
19 could remember these trades clearly. Were these big trades
20 for you?

21 A They were average.

22 Q Could you remember them clearly?

23 A I do, yes.

24 Q You were asked on cross-examination whether
25 you ever talked to Mr. Scardino with respect to the sale

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1 of stock. What is your answer to that?

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2 A Well, I talked to Mr. Scardino when I opened
3 the new account, but I talked to him on the telephone.
4 That is the only time I talked to him, other than when I
5 picked up the check.
6

7 Q Did he ever say anything with respect to the
8 selling or buying of stock?

9 A Just the sale of that particular block of
10 securities, that was all.

11 Q What did he say with respect to that block?

12 A Just to sell them.

13 MR. PAPE: Your Honor, I will object. I think
14 the government is impeaching his own witness. He said
15 on cross that he never discussed the sale with Mr. Scardino

16 THE COURT: Overruled.

17 Q With respect to Government's Exhibit 1K in
18 evidence, which is certificate 1596, is this the certificate
19 that Mr. Scardino had brought in and that you said you could
20 not sell?

21 MR. PAPE: I object. He is going beyond the
22 scope of redirect.

23 THE COURT: I think so, Mr. Siffert.

24 Q I show you Government's Exhibit 30-A and ask
25 if you can identify it?

mmh3

Parker-redirect

1
2 A Yes.

3 MR. PAPE: Could we know what 30-A is?

4 THE COURT: Can you identify it?

5 THE WITNESS: Yes, I can identify it.

6 THE COURT: Don't read it. Just tell us what it is.

7 THE WITNESS: This is a certification.

8 THE COURT: Is it a record of your company?

9 THE WITNESS: No, sir.

10 Q Was it received by your company in the regular
11 course of business?

12 A Yes.

13 Q Was it the regular course of your company to
14 receive such a document?

15 A Yes.

16 THE COURT: Now you got a foundation.

17 MR. SIFFERT: I offer it.

18 MR. PAPE: I object on the ground it is going
19 beyond the scope of redirect. If he offered it he should
20 have offered it on direct.

21 THE COURT: let me see it. I agree, but I will
22 allow it, nonetheless.

23 (Government's Exhibit 30-A received in evidence.)

24 MR. PAPE: I have a further objection that
25 it is hearsay as to this witness.

mmh4

Parker-redirect
recross

THE COURT: Overruled.

MR. SIFFERT: No further questions, your Honor.

RECROSS EXAMINATION

BY MR. PAPE:

Q Mr. Parker, I think you testified earlier that you thought perhaps you had seen Mr. Scardino one time? Is that right?

A That is correct.

Q You testified that was the only time you had ever met Mr. Scardino?

A That is correct.

Q You testified that at that one time that you met Mr. Scardino there was no conversation concerning a sale of stock at that time? Is that correct?

A At that particular time I don't believe so. I think he just picked up the check and that was it.

Q So you had really no conversation with Mr. Scardino at that time?

A Not at that time.

Q So the only time you had ever spoken with Mr. Scardino has been by telephone? Is that right?

A That is correct.

Q So you don't know whether you were talking with Mr. Scardino or whom? Do you?

mmh5

Parker-recross
redirect

A That is why I answered your question the first time that way. No, I don't.

REDIRECT EXAMINATION

BY MR. SIFFERT:

Q When you called on the phone, referring to the conversation that Mr. Pape was asking you about, did the man introduce himself as Mr. Scardino?

A Yes, sir.

Q You answered him as Mr. Scardino?

A Yes, sir.

Q And at that time the man who identified himself as Mr. Scardino asked you to sell stock for him?

A That is correct.

THE COURT: Did you sell the stock?

THE WITNESS: Yes.

THE COURT: What did you do with the proceeds?

THE WITNESS: The proceeds Mr. Scardino picked up at our office.

MR. PAPE: I would like a clarification on that, your Honor, as to which sale.

THE WITNESS: If I could look at the checks I can tell you, sir.

MR. SIFFERT: Is that the check?

THE WITNESS: It would be the check for \$30,441.

JA506

mmh6

Parker-redirect
recross

370

as it is endorsed by Mr. Scardino with his Texas driver's
license on it.

THE COURT: The first sale or the second sale?

THE WITNESS: It would be the check that was due
on 11-18-69, the sale of the 6,000 Pioneer Development,
the first portion of it.

MR. PAPE: I do have further recross.

THE COURT: This is not a tennis match. Try to
get everything in on direct so that we don't have to have
this go back and forth.

RECROSS EXAMINATION

BY MR. PAPE:

Q The check that you're referring to now, do
you remember that Mr. McKibbin was with Mr. Scardino when
that check was picked up?

A I can't really testify that I do.

Q Do you remember that Mr. McKibbin went down
to the bank and had additional cashier's checks issued?

A I don't know if they did.

Q You don't remember?

A I didn't go down to the bank, so I wouldn't know.

MR. PAPE: Could I see the \$16,000 check?

Q Mr. Parker, I hand you another check which is
already in evidence, Government's Exhibit 21-C. To whom

JA507

371

mmh7

Walker-recross
Azzeroni-direct

is that check made payable?

A It is made payable to Tony Scardino.

Q What is the date on that check?

A 11-24-69.

Q How is the check endorsed?

MR. SIFFERT: Objection, your Honor. It speaks for itself.

THE COURT: Sustained.

Q Is it not true that that check --

MR. SIFFERT: Objection, your Honor.

THE COURT: Sustained. You can read the endorsement.

THE WITNESS: The check is endorsed Tony Scardino by Richard McKibbin, power of attorney.

MR. SIFFERT: No further questions.

(Witness excused.)

MR. WALKER: The government calls Joseph Azzeroni.

J O S E P H A Z Z E R O N E, a witness called on behalf of the government, being first duly sworn, testifies as follows:

DIRECT EXAMINATION

BY MR. WALKER:

Q Mr. Azzeroni, how are you currently employed?

A As a bartender.

THE COURT: Keep up your voice good and loud.

THE WITNESS: As a bartender.

Q Where are you a bartender, sir?

A Worcester, Massachusetts.

Q How long have you lived in Worcester?

A 31 years.

Q How old are you now, sir?

A 31.

Q What is your level of education?

A Two years of school after high school.

Q Did there come a time, sir, directing your attention to October of 1969, when you were working in New York?

A Yes, sir.

Q How were you employed at that time?

A As the proprietor of Karen & Company.

MR. DOYLE: I can't hear the witness.

THE COURT: As proprietor of Karen & Company.

Keep your voice up. You are years younger than I am. You should be able to speak equally loud.

Q What was the address of Karen & Company at that time?

A 2 John Street.

Q Do you know Stuart Schiffman?

mmh9

Lzerone-direct

1
2 A Yes.

3 Q Did there come a time, sir, when you had a
4 conversation with Mr. Schiffman concerning Pioneer
5 Development stock?

6 A Yes.

7 Q Where was the conversation?

8 MR. DOYLE: Your Honor, may we have the place,
9 who else was present, and may we also have a standing
10 objection to the conversation on the grounds that Mr. Seegal
11 was not present.

12 THE COURT: I gave you that yesterday. I don't
13 have to give it to you every day, do I?

14 MR. DOYLE: No.

15 Q What was the conversation and who was present?

16 A The conversation was at 2 John Street, and
17 just myself and Stu Schiffman.

18 Q At Karen & Company's offices?

19 A Yes, sir.

20 Q What was said at that time?

21 MR. DOYLE: We still don't have a date.

22 Q Do you recall the date, sir?

23 A October of 1969, some time around there.

24 MR. DOYLE: can't hear.

25 THE COURT: One time in October of 1969.

JA510

mmh10

Azzarone-direct

114

Mr. Azzarone, I ask you again to keep your voice up. Speak up.

Q What was that conversation?

A The conversation was pertaining to Pioneer Development.

Q What did Mr. Schiffman say and what did you say, in substance?

A Mr. Schiffman asked me to trade Pioneer Development and I agreed to.

Q Did he say anything further at that time how you would trade the stock?

A Yes.

Q What was said?

A He told me that I would go in the pink sheet and that I would be quoted as to what prices to quote the stock and I would be protected on both sides.

Q What does protected on both sides mean?

A If I was long at the end of the day I would take it out of an account and if I was short I would take it out of the same account.

THE COURT: What do you mean long and short? Tell the jury.

THE WITNESS: If I had extra stock at the end of the day I would sell it to another account; if I needed stock

mmh11

Azzarone-direct

37

at the end of the day I could buy it out of another account.

Q Were you told what account?

A Yes.

Q What was the name of the account?

A Francine Zee.

Q What were you told about quotes in the pink sheets?

A I would be told what quotes to put each day, and what price to quote the stock.

Q Would you tell the jury what the pink sheets are?

A Pink sheets list all over the country stocks each day.

Q What is in the pink sheets?

A The name of the stock companies and the prices the quotes.

Q Sir, is it fair to say in the pink sheets is the name of the company whose stock is being traded and after that the name of the brokers trading the stock, and next to their names their quotes for the stock, the bid and asked price?

A Yes.

Q Now, if the arrangement was followed by you was there any way you could lose money in this transaction?

JA512

376

mmh12

Azzarone-direct

A No.

Q Why is that?

A I had stock to get every day out of that certain account.

Q When you saw stock to get, you mean that if you sold stock at a certain price you could then purchase stock at a lower price for your trading account?

A Yes.

Q Were you told by Mr. Schiffman that these purchases could also be made from the Zahl account?

MRS. DOYLE: Objection to the leading.

THE COURT: Yes.

Q What were you told by Mr. Schiffman as to where those purchases could be made for your trading account at the end of the day?

A I could make trades out of the same account.

THE COURT: At what price were you to pay for stock out of the Zahl account if you were short?

THE WITNESS: Depending. Sometimes a quarter, sometimes a half a point.

THE COURT: Half a point on what? Which direction?

THE WITNESS: Either direction.

THE COURT: Direction for what?

THE WITNESS: From the price of the cost.

JA513

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mmhl3

Azzerone Direct

THE COURT: I don't understand.

MR. WALKER: I will try to clarify it.

Q Mr. Azzerone, assume that you sold stock out of the trading account during the day at \$7 a share and you received \$7 a share for selling that stock, at what price would you purchase that stock from the Zahi account?

A Depending on 6-3/4, 6-1/2.

Q Assuming, sir, that you bought stock at a certain price at, say, \$5 a share, at what price could you sell that stock to the Zahi account?

A The same thing, 5-1/4, 5-3/8.

Q At a higher price?

A Right.

Q Sir, I show you Government's Exhibit 100 for identification and ask if you can identify that.

A Yes.

Q What is it?

A That is an application for the National Quotation Bureau.

Q Does this document bear your signature?

A Yes, it does.

Q Can you tell us how this document was prepared or where it was prepared, the circumstances of its preparation?

A It was prepared by Sir Scottman.

JA514

unhl4

lizzerone-direct

Q What happened to it after he prepared it?

A I mailed it into the National Quotation Bureau.

Q After he prepared it did you sign your name?

A Yes, I did.

Q I show you Government's Exhibit 100-A for identification and ask if you can identify that document.

A Yes.

Q What is it?

A It's a letter to Karen & Company from Francine Zahl.

MR. WALKER: I offer it.

MR. COYLE: no objection.

THE COURT: received.

(Government's Exhibit 100-A received in evidence.)

MR. WALKER: I am not offering the handwriting at the bottom of the page. May I read this very briefly

(Mr. Walker reads from Government's Exhibit 100-A to the jury.)

xx

JA515

16 am

jks

Azzerone-direct

37

Q Show your Government's Exhibit 100-B for identification and ask if you can identify that?

A Yes.

Q What is it?

A It is a new account card for Francine Zahl.

MR. WALKER: I offer it.

MR. DOYLE: No objection.

(Government's Exhibit 100-B was received in evidence.)

Q Mr. Azzerone, in connection with your trading in Pioneer, did you follow a regular course of practice at the end of every day, starting at the end of October and thereafter?

A Yes.

Q And would you tell the Court and jury what your regular practice was every day during that period?

A At the end of the day I would figure out my position and I would buy stock out of the Francine Zahl account for my trading account.

Q That is if you sold stock that day, is that right?

A Yes.

Q And would you make any reports or phone calls?

A Yes, I did.

ks2

A7 phone-direct

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Q And what would you do?

3

A I would call Francine Zahl.

4

Q And what was that conversation -- what would

5

that conversation be?

6

A That would be to tell her how many shares I

7

sold for a certain day and how many I was buying from her
8 account.

9

Q Now, do you recall any conversations with Mr.

10

Schiffman on that score?

11

A Yes, I do. Mr. Schiffman used to call me or

12

I'd call him.

13

MR. DOYLE: Your Honor, on these telephone con-

14

versations? Can we have some foundation, your Honor?

15

MR. WALKER: Very well.

16

Q Were these telephone conversations?

17

A Yes.

18

Q And were they during the same period?

19

A Yes.

20

Q What were the conversations?

21

THE COURT: Sustained. Let a foundation.

22

MR. WALKER: Very well.

23

Q Do you recall, sir, any specific conversation

24

on any specific day?

25

A Just I would --

ks3

Q No, just simply yes or no, do you recall any specific conversation on any specific day?

A Specific day, no.

Q Do you recall a practice of conversations between you and Mr. Schiffman.

A Yes.

Q And was that over the period between October 1941 and thereafter?

A Yes.

Q And would you tell us, sir, what the practice was in these telephone conversations with Mr. Schiffman?

A Just to quote him how many shares was sold on a certain day or how many shares were bought.

Q During that period of time, sir, were communications given to you at the end of the day concerning what the quote would be the next day?

A Yes.

Q And what were you told on that score?

MR. DOYLE May we find out by whom he was told this?

THE COURT I asked him to lay a foundation. He hasn't done it and I haven't heard any objection from you, but I guess this is the appropriate point to make it, Mr. Doyle.

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Azzarone-direct

MR. WALKER: Very well.

Q With regard to these conversations, with whom did you have these conversations? The ones concerning the quotes.

A With Mr. Schiffman and Miss Zahl.

Q And again, sir, what was the nature of the conversation? Was it in person or by telephone?

MR. DOYLE: Can we find out whether these are daily conversations, weekly, how frequent were they? I don't think we have any foundation as to what these communications really represented.

THE COURT: Overruled on that point.

Q How often were these conversations?

A Every day.

THE COURT: Do I understand you are objecting to the voice identification?

MR. DOYLE: No, your Honor, it is simply I didn't know how often.

THE COURT: Then overruled as to the foundation. Go ahead.

MR. DOYLE: Thank you.

Q Mr. Azzarone, what would happen -- what was the practice in these conversations; what would either Mr. Schiffman or Mrs. Zahl tell you, concerning the quotes?

ks5

Azzerone-direct

38

1 A They would tell me what to start the quoting
2
3 the next day.

4 Q What would you do after you got that inform-
5 ation?

6 A I would start trading the stock the next day
7 that price.

8 Q Would you do anything with the quote in terms
9 of the pink sheets?

10 A Yes, put in the pink sheets daily.

11 THE COURT: How is that quote normally determined?
12 If nobody says quote at at 7 or if you don't just arbitrarily
13 pick 7, how is the quote normally determined?

14 THE WITNESS: By stock, supply and demand.

15 THE COURT: By supply and demand?

16 THE WITNESS: By the cost and supply and demand.

17 Q Did there come a time, sir, when you learned of
18 the name, Alan Segal?

19 A Yes.

20 Q And would you try and fix the moment at which
21 you learned of that name, as best you can. When was it and
22 who was present?

23 A Mr. Schiffman and myself were present.

24 Q Where?

25 A I think it was 2 John Street.

JA520

Azzarone-direct

384

1 k36
2 Q Approximately when in relation to the time
3 period that we are talking about?

4 A A couple of months.

5 Q What was that conversation?

6 MR. DOYLE: A couple of months from when?

7 THE WITNESS: From October, from when the stock
8 started trading.

9 Q What was that conversation?

10 A He told me that Francine Zahl was a nominee for
11 Alan Segal.

12 Q Following that information coming to your atten-
13 tion, did you have any telephone conversations with Mr.
14 Segal?

15 A Yes, I did.

16 Q Would you tell us how often, how frequent those
17 conversations were after you learned this?

18 A When I called Miss Zahl, he would get on the
19 phone most times --

20 Q And how frequent were those conversations?

21 A Two or three times a week.

Q Can you tell us, sir, what was said in these
telephone conversations between you and Mr. Segal?

A I would tell him how many shares were bought or
sold during the course of the day.

1 ks7 Azzerone-direct 385
2 Q Did Mr. Segal give you any information? Would
3 he give you any information on those calls concerning the
4 next day?

5 A Yes.

6 Q And what information?

7 A He would tell me what to trade the stock at.

8 Q Mr. Azzerone, I show you Government's Exhibit
9 101 for identification and ask if you can identify these
10 documents?

11 A Yes.

12 Q What are they?

13 A Confirmations.

14 Q Are they confirmations of Karen & Company?

15 A Yes.

16 Q Made and kept in the ordinary course of the
17 business of Karen & Company?

18 A Yes.

19 Q And do the transactions recorded on these con-
20 firmations occur on or about the time that the entires are
21 made?

22 A Yes.

23 MR. WALKER: I offer these documents, your
24 Honor.

25 This is Government's Exhibit 101, 101-A, 101-B,

101-C, 101-D, 101-E, and that's it.

MR. DOYLE: Your Honor, no objection.

(Government's Exhibits 101, 101-A, 101-B, 101-C,
101-D, 101-E were received in evidence.)

MR. WALKER: Your Honor, may the record reflect
that the Exhibit 101 covers the entire batch, and that
there are specified confirmations which are numbered by
letter within that batch.

THE COURT: Do you have those on a schedule?

MR. WALKER: They will be, your Honor. I intend
to present them on a schedule, but I want to get them in
first.

Q Mr. Azzerone, I show you Government's Exhibit 102
for identification.

Can you identify that document?

A Yes.

Q What is it?

A Monthly statement.

Q For who?

A For Francine Zahl.

Q At where? What firm?

A Karen Company.

Q Is this a document also made and kept in the
ordinary course of the business and are the transactions

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Azzerone-direct

387

recorded --

MR. DOYLE: Your Honor, as to the competence of these documents there is no problem. They are all original documents. There is no objection.

MR. WALKER: Very well.

I offer them.

THE COURT: Thank you, Mr. Doyle.

Received.

(Government's Exhibit 102 was received in evidence.)

MR. WALKER: I offer at this time also, your Honor, Government's Exhibit 104 for identification.

Q I ask you, Mr. Azzerone, is that what is known as a comparison?

A Yes.

Q Consisting of a confirmation, two confirmations, one from the buying and one from the selling broker?

A Yes.

Q Are these records also Karen records?

A Yes.

MR. WALKER: 104 for identification, a comparison, 116-B for identification also a comparison, 116-C for identification, a confirmation, 119 for identification, a comparison, 120-B for identification, a comparison.

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Azzerone-direct

388

1 ks10 Azzerone-direct 388
2 Q Mr. Azzerone, with regard to these confirmations
3 which you have identified and comparisons --

4 MR. WALKER: I offer them.

5 MR. DOYLE: No objection.

6 (Government's Exhibits 104, 116-B, 116-C, 119,
7 120-B were received in evidence.)

8 Q Mr. Azzerone, with regard to the confirmations
9 of Karen & Company, was it the practice of Karen & Company
10 to mail each and every one of these confirmations to the
11 addressee designated on the confirmation?

12 A Yes.

13 Q And to your knowledge was that done in every
14 case?

15 A Yes.

16 Q With respect to the comparisons which contain
17 confirmations from other brokers, were these confirmations
18 received in the mail from the other brokers?

19 A Yes.

20 Q I show you Mr. Azzerone, Government's Exhibit
21 103-A, 103-B, 103-C and 103-D and ask if you can identify
22 those four documents?

23 A Yes.

24 Q What are they?

25 A Checks.

xx

1 ksll
2 Q And are these checks by Karen & Company made
3 out to Francine Zahl?

4 A Yes.

5 MR. WALKER: I offer them.

6 MR. DOYLE: No objection.

7 (Government's Exhibits 103-A through 103-D
8 were received in evidence.)

9 MR. WALKER: Your Honor, could I simply state
10 the date and the amount of each of these four checks?

11 MR. DOYLE: Your Honor, they speak for them-
12 selves.

13 MR. WALKER: That is the point.

14 THE COURT: The point of the schedule was to
15 di that, to save the time.

16 MR. WALKER: Yes, Your Honor.

17 Q Now, Mr. Azzerone, have you pled guilty in this
18 case?

19 A Yes, I have.

20 Q And did you plead guilty to Count 1 of this
21 indictment?

22 A Yes.

23 Q Was there a time, sir, when you testified
24 before the SEC in connection with Pioneer Development Cor-
25 poration?

ksl2

Azzerone-direct

390

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2 A Yes.

3 Q And was your testimony entirely truthful before
4 the SEC?

5 A No.

6 Q Is it your understanding, sir, that your testify-
7 ing and cooperation will be brought to the attention of the
8 judge at the time of sentence in your case?

9 A Yes.

10 Q Have you ever been given any assurances as to
11 what that sentence will be?

12 A No.

13 Q Were you told that if you told the truth that
14 that fact would be brought to the attention of the sentenc-
15 ing judge --

16 MR. GREENBERG: Objection, your Honor.

17 THE COURT: Overruled.

18 Q Were you told that if you told the truth that
19 fact would be brought to the attention of the sentencing
20 judge by the Government?

21 A Yes.

22 Q Do you understand that with regard to your guilty
23 plea in this case that you would not be prosecuted for any
24 other additional crimes of which the Government is aware
25 in connection with your activities at Karen & Company?

jks

Azzerone-direct

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2 A Would you repeat that question, please?

3 THE COURT: The reporter will read it.

4 (Question read.)

5 A Yes.

6 Q And that is assuming that your cooperation is
7 truthful and complete, is that correct?

8 A Yes.

9 THE COURT: I want to say to the jury, whether
10 this witness' testimony is truthful and complete is for you
11 to say and not for the witness or Mr. Walker.

12 MR. WALKER: Yes, your Honor.

13 I have no further questions for this witness.

14 MR. DOYLE: May I proceed, your Honor?

15 THE COURT: Yes.

16 CROSS EXAMINATION

17 BY MR. DOYLE:

18 Q Mr. Azzerone, Mr. Walker asked you if you had an
19 understanding that you would not be prosecuted in connection
20 with any other crimes involving Karen & Company and your
21 response was yes, and my question is, does that include,
22 to your understanding, the crime or crimes of perjury?

23 A Yes.

24 Q Now, you testified on direct examination that
25 you were not entirely truthful when you testified before the

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Azzerone-cross

392

1 SEC. Is that correct?

2 A Yes.

3 Q You also testified on direct examination that
4 you had various telephone calls with my client, Alan Segal,
5 in which he gave instructions with respect to quotes, is
6 that correct?

7 A Yes.

8 Q Do you remember testifying in the grand jury, in
9 this building, on July 18, 1974?

10 A Yes.

11 Q And do you remember being asked the following
12 question and giving the following answer at page 7:

13 "Were any instructions given to you by Alan
14 Segal, do you recall?

15 "A No, I don't."

16 Was that testimony truthful on that date when
17 you gave it?

18 A Yes.

19 Q Now, that was approximately three months ago
20 and approximately three and a half years after the event.
21 Is your recollection any better about the events today than
22 it was in July 1974 -- in 1974?

23 A They're the same.

24 Q Your recollection is the same.
25

Now, you have testified that both statements were truthful, what you said in July and what you said in court today. Is that still your testimony, that on the one hand you gave instructions to Alan Segal, but on the other hand you didn't give them?

MR. WALKER: That is not the testimony.

THE COURT: Sustained.

Confront him with his actual testimony, if you wish.

Q Mr. Azzerone, I am going to direct your attention to your testimony on direct to the effect that you had various conversations with Stuart Schiffman.

Do you recall the testimony on direct a few moments ago? Do you recall testifying to that effect?

A Yes.

Q Do you recall testifying before the SEC here in New York on June 3, 1970?

A Yes.

Q Directing your attention to the following question and answer appearing on page 21, were you asked the following question and did you give the following answer --

MR. WALKER: What was the date?

MR. DOYLE: The date is June 3rd, 1970,

page 21.

jks

Azzerone-cross

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Q "Repeating the question, did you ever speak to Mr. Schiffman in reference to Pioneer Development Corporation?

A No."

Q Were you telling the truth on that occasion?

A No.

Q You were lying, weren't you?

A Yes.

Q You also admitted in the grand jury, did you not, Mr. Azzerone, that you made certain false statements to the Securities and Exchange Commission, isn't that correct?

A Yes.

Q What were those false statements?

A Well, there were many of them.

Q There were many false statements?

A Yes.

Q Well, tell us those ones that you can remember.

A Well, just the one you gave me, for instance, when he asked me if I talked with Mr. Schiffman about this, and I said no.

Q What about not disclosing the interest of a Mr. Vanasco in Karen & Company?

Did you make false statements about that to the SEC?

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Azzerone-cross

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2 A Yes.

3 Q And you admitted making those false statements
4 in the grand jury when you testified on July 18, 1974,
5 isn't that correct?

6 A Yes.

7 Q Now, you received a due diligence file in
8 connection with the trading in this account at Karen &
9 Company, did you not?

10 A Yes.

11 Q Would you describe to the best of your recollec-
12 tion what this due diligence file consisted of?

13 A I don't recall. A financial statement.

14 Q Pardon?

15 A There was a financial statement in there.

16 Q There was a financial statement in there?

17 A I believe so, yes.

18 Q Plus other things that you don't recall?

19 A Right.

20 Q When and where was the last time that you saw
21 the due diligence file, Mr. Azzerone?

22 A I don't remember?

23 Q Do you remember being directed by the Securities
24 and Exchange Commission to produce all records in your
25 possession relating to Pioneer Development Corporation?

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Azzerone-cross

396

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2 A Yes.

3 Q And did you comply with that request of the
4 Securities and Exchange Commission?

5 A Yes.

6 Q And did you turn the due diligence file over to
7 the Securities and Exchange Commission?

8 A Yes.

9 Q Have you seen it since then?

10 A I don't believe so, no.

11 THE COURT: When you turned it over, what was
12 the condition of this file? Was it all bound together
13 or was it separate papers or how?

14 THE WITNESS: It was a folder with all loose
15 papers.

16 THE COURT: Loose papers?

17 THE WITNESS: Right.

18 Q Now, you testified on direct that your arrange-
19 ment at Karen & Company was such that you could not lose
20 money, is that a fair statement of your testimony?

21 A Yes.

22 Q Now, the same is also true, is it not, when a
23 brokerage firm acts as a broker for a company executing
24 trades and charges brokerage commissions, isn't that true?

25 A Yes.

1 jks

2 Q Now, as I understand it, what you did in this
3 case was place quotes in the pink sheets, is that a fair
4 statement of what you did with respect to the market in
5 Pioneer Development Corporation?

6 MR. WALKER: Objection, your Honor. I don't
7 think that is anywhere near the testimony.

8 THE COURT: Sustained.

9 Q Mr. Azzerone, in the course of the transactions
10 that you have described, did it develop that there was a
11 market for the purchase of Pioneer Development Corporation
12 after you put quotes into the pink sheets?

13 A I don't understand what you mean. I'm sorry.

14 Q In other words, if you put a quote in the pink
15 sheets on a given day as you have described, asking 6 or
16 7 dollars for shares of Pioneer Development Corporation,
17 did buyers appear on the market offering to pay those
18 prices for those shares?

19 A Yes.

20 Q And did that happen on a regular basis?

21 A Yes.

22 Q And did those offers to pay the prices that
23 you were asking for Pioneer Development shares emanate from
24 a large number of different brokerage firms throughout New
25 York City and throughout the country?

1 jks
2 A Yes.

3 Q At least a dozen or fifteen approximately, wouldn't
4 you say?

5 A Yes.

6 Q Now, with respect to the cooperation that you
7 were furnishing to the Government, you understand, do you
8 not, that the interpretation of Mr. Walker and the United
9 States Attorney's office as to whether your testimony is
10 truthful and the representations made to the Court at the
11 time of sentencing will have weight in connection with
12 sentencing, don't you, Mr. Azzerone?

13 MR. WALKER: Objection. It is a matter for the
14 Court.

15 THE COURT: Well, not his understanding.
16 Overruled.

17 MR. WALKER: Very well.

18 THE WITNESS: Please repeat that question.

19 (Question read.)

20 THE COURT: Do you understand the question?

21 THE WITNESS: I don't understand the question,
22 your Honor.

23 Q Let me try to state it more simply, Mr.
24 Azzerone.

25 You understand, don't you, that it will be

1 jks
2 important for you at the time of sentencing, if the
3 Government construes your cooperation and the information
4 you have given as being truthful and so represent that to
5 the Court, you understand that that is important, don't
6 you?

7 A Yes.

8 MR. DOYLE: No further questions, your Honor.

9 MR. GREENBERG: No questions on behalf of Mr.
10 Zuber, your Honor.

11 MR. WINOGRAD: No questions on behalf of Mr.
12 Levine.

13 MR. PAPE: No questions.

14 MR. NEWMAN: No questions on behalf of Mr.
15 Finkelstein.

16 THE COURT: Any redirect?

17 MR. WALKER: Very brief, your Honor.

18 REDIRECT EXAMINATION

19 BY MR. WALKER:

20 Q Mr. Azzerone, you testified on cross-examination
21 that from time to time buyers would appear and buy stock
22 from you in the market, is that correct?

23 A Yes.

24 Q Were you ever told where these buyers would
25 come from or where you could sell stock?

1
2 A Yes.

3 Q And in connection with Pioneer?

4 A Yes.

5 Q And would you name any individuals who told you
6 hat?

7 A Mr. Schiffman.

8 Q Now, sir, You testified on cross-examination that
9 you gave a false statement to the SEC concerning whether
10 or not Mr. Vanasco was a hidden principal or a principal
11 of Karen & Company, is that correct?

12 A Yes.

13 Q And, in fact, were you a nominee of Mr. Vanasco?

14 A Yes.

15 Q And were You aware that the fact that you were
16 a nominee and Mr. Vanasco was a hidden principal in the firm
17 would constitute or could constitute a violation of the
18 securities laws?

19 A Yes.

20 Q Did you want to cover that up because you knew
21 that was a serious offense?

22 A Yes.

23 MR. WALKER: I have no further questions.

24 MR. DOYLE: No questions, your Honor.

25 THE COURT: You are excused.

(Witness excused.)

THE COURT: Next witness.

MR. WALKER: Mr. Clegg.

--

M I C H A E L W. C L E G G , called as a witness
by the Government, having been first duly sworn,
testified as follows:

DIRECT EXAMINATION

BY MR. WALKER:

Q Mr. Clegg, have you pled guilty to Counts 1 and
2 of this indictment?

A Yes, I have.

Q Now, Mr. Clegg, directing your attention, sir,
to the early part of 1969, did you know Burney Acton at
that time?

A Yes, I did.

Q And how long had you known Mr. Acton?

A For two years before that.

Q And what was your relationship?

A We were partners in business.

Q Did you have a bank account together?

A Yes, we did.

Q Where?

A Crocker's Citizens Bank, Los Angeles.

Q Now, during the spring of 1969 were you in

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Clegg-direct

402

1 touch with Mr. Acton on a regular basis?

2 A Yes, I was.

3 Q And were you aware of what was happening in
4 connection with American Aluminum and Pioneer Development
5 in the spring of 1969?

6 A Yes, I was.

7 Q And what was your understanding, sir, concernig
8 what was being done in connection with American Aluminum
9 and Pioneer Development during that period of time?

10 A My understanding was that American Aluminum
11 & Steel was being merged into Pioneer, with Pioneer being
12 the surviving name, and this was, I guess, had been drawn
13 up on an option contract.

14 Q Now, were there any discussions between you and
15 Acton about putting money into American Aluminum at that
16 time?

17 A Yes.

18 Q And what were the conversations on that score?

19 A Burney said that he needed operating capital to
20 make American Aluminum productive, and we advanced about
21 \$35,000 cash to him.
22
23
24
25

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Clegg-direct

T7 1 mmhl Clegg-direct
2 Q Now, sir, in this period of time, in the spring
3 of 1969, were you aware of an effort being made by in-
4 dividuals to acquire the outstanding stock of Pioneer
5 Development Corporation?

6 A Yes, I was.

7 Q Would you tell the court and jury what happened,
8 what was going on in this regard?

9 A Basically, I believe this was only Burney, and
10 a gentleman, Mr. George Aaron, were contacting old stock-
11 holders of Pioneer Development, at this time Mr. Roy
12 Lewis and Mr. Ed May were the chairman and president of
13 Pioneer, and they were buying up shares from the stock-
14 holders either for money or giving them back some of their
15 stock, 10 per cent of their stock, or something if they
16 donated it to the company.

17 Q During that period of time, sir, did you enter
18 into arrangements with certain individuals that you knew
19 who were, in effect, buying stock or would be given stock
20 some time in the future in return for money they were putting
21 up for Pioneer?

22 A Yes, I did.

23 Q Who were those individuals as best you can recall
24 and the money of money involved?

25 A My father-in-law --

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Clegg-direct

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Q What is his name?

A Ermanno Mariot for about \$30,000, Herb Kaighan for about \$3,000, Bill Morgan for about \$12,000, Dolores Morgan for about \$6,000.

Q Could you stop there, sir. What was your relationship with the Morgans and Kaighan?

A Kaighan had gone through school with me for about ten years. He was my best friend. And Dolores Morgan was my secretary, and Bill Morgan was her ex-husband.

Q Does the name Frank Laban mean anything?

A Frank Laban was one of my salesmen.

Q Did he put up money?

A He purchased a thousand dollars worth.

Q Warren Brown.

A Warren Brown worked for me, and I believe Warren put up about \$4,500.

Q Mary Herald.

A Mary Herald was a secretary in our office and she put up about \$1,000.

Q George Kasner.

A George Kasner was a friend of Jay Walker. He and his wife put up about \$6,000.

Q Tom Von Deten.

A He was a friend of Warren Brown. I believe he

mmh3

Clegg-direct

put up about \$1,500.

Q Jackson Holder.

A He was a friend of Warren Brown and I don't remember how much he put up.

Q Eventually, sir, were certain shares issued to these individuals?

A Yes, there were.

Q Was it some of this money that was transferred to American Aluminum and Steel in the spring of 1969?

A Yes, I believe it was.

Q Did there come a time, sir, when you learned that American Aluminum and Steel was not going to merge or the merger would be over with Pioneer Development Corporation?

A There was.

Q Was that some time in June or thereabouts in 1969?

A It seems like it was later in the summer.

Q June or July?

A At least.

Q Now, following the departure of American Aluminum from Pioneer, what did Pioneer consist of?

A They had an option to purchase a mine in Nevada and an option to purchase a company called Precise Power.

Q Were those options in writing?

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Clegg-direct

A Yes, they were.

Q Was there a note payable from American Aluminum for \$35,000?

A There was.

Q Now, sir, was that note ever collected on to your knowledge?

A No, it was not.

Q Apart from the two options that you mentioned, were there any actual assets that had been acquired at that time?

A No, there were not.

Q Directing your attention to late September or early October, 1969, or thereabouts, did there come a time when you met a person by the name of Anthony Scardino and the subject of Allen Segal came up?

A What time?

Q I am just asking you if you recall such a conversation?

A Yes.

Q Do you recall approximately when that occurred?

A If I want to guess, in the middle or late September.

Q Do you recall the circumstances of your being in Reno?

JA543

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Clegg-direct

1 mmh5
2 A Yes, Burney and I had a company that did flocking
3 on walls and we were flocking the casino, Riverside Hotel,
4 that Tony Scardino was involved in.

5 Q What was the conversation that you had with Mr.
6 Scardino at that time?

7 MR. DOYLE: Objection, since this conversation
8 occurred before any possible alleged participation in
9 these charges by Mr. Segal.

10 MR. WALKER: It's being offered subject to con-
11 nection, all of these conversations subject to connection.

12 MR. DOYLE: Your Honor, there is a particular
13 aspect of this conversation that I would like to take up
14 at the side bar.

15 THE COURT: All right.

16 (At the side bar.)

17 MR. DOYLE: I believe there is going to be some
18 reference to some other case when Mr. Segal allegedly did
19 something to make the price of a stock rise. This is in the
20 3500 material. And I think it would be highly prejudicial
21 since it is a hearsay statement.

22 THE COURT: Do you intend to go into that?

23 MR. WALKER: Yes, because it goes into the
24 question of Mr. Scardino's knowledge.

25 THE COURT: Knowledge of what?

mmh6

MR. WALKER: Of Mr. Segal's activities and what Mr. Segal was doing.

THE COURT: In this case?

MR. WALKER: In this case and it leads to the introduction.

THE COURT: I want to hear it in the absence of the jury.

MR. WALKER: Very well, your Honor.

THE COURT: Are you at that point in the case yet? Or can we hear it during the lunch hour?

MR. WALKER: We will hear it later.

THE COURT: Let's save it.

(In open court.)

Q Following, sir, your conversation with Mr. Scardino, let me just put it to you, sir, did Mr. Scardino agree that you could meet, that you should meet with Mr. Segal?

A Yes, he did.

Q Following that meeting, following that conversation, did you speak to Mr. Segal on the telephone?

A Yes, I did.

Q Where were you when you spoke to him as best you can recall?

A I don't remember.

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Clegg-direct

Q What was the conversation?

A Briefly, that we had a dormant public company that we would like to see trading again and could he help us get trading, and he asked me enough questions about it to fill himself in that we decided to set up a meeting to discuss it in person.

Q Where did you decide to have that meeting?

A Dallas, Texas.

Q Did you go to Dallas?

A Yes, I did.

Q With Mr. Acton?

A I believe so.

Q Apart from whether you went there with him, was Mr. Acton present at the meeting?

A I think he was.

Q Do you recall, sir, anyone else who was present?

A I don't remember anybody besides Mr. Segal.

Q Does that mean that there were other people present whose names you don't recall?

A I don't remember. It is hazy.

Q Where was this meeting?

A At some hotel in the breakfast room, coffee shop.

Q Did you make a statement at that time to Mr. Segal?

A A statement of condition, of where we were.

mmh8

Clegg-direct

Q What did you say?

A I was as frank as I could be with him about the situation.

MR. DOYLE: Objection, your Honor.

THE COURT: Yes, strike it out.

What did you say? What did he say? What did anybody say? Just give the conversation as best you can remember it.

A I told him of the stock, the situation of Pioneer from the beginning, namely, that the stock, the majority of outstanding stock to our knowledge had been bought in, was collected in one place, a little bit of the history of the company, how old it was and its various trading and history and so forth up to that point. I gave him two documentations of the mine and the Precise Power acquisition. I told him of the predicament I personally was in, inasmuch as all of my closest friends and relatives had long money or invested money in Pioneer with the assurance that the stock would be trading long before this. It was not yet trading, that we needed someone of his background and experience to open the stock up and be, to my understanding, like an underwriter for it.

Q Did you discuss, sir, what his background was at that meeting with Mr. Segal?

1 mmh9
2 A Yes. Mr. Segal told us that this was his
3 background, he was experienced in this type of operation.
4 He had given me the example of one company, which was
5 Acme, which sounded similar to our situation, and that he
6 had been successful with that company.

7 Q What did he say about Acme?

8 A That he had taken it as a fledging type company--

9 MR. DOYLE: Excuse me. I can't hear.

10 THE COURT: He had taken it as a fledging type
11 company.

12 Keep your voice up, Mr. Clegg, please.

13 A -- and had been successful in bringing the
14 stock up to a relatively high price and that the people
15 there if they had listened to him and done what he had
16 told them, it would have remained at a good price. Instead,
17 they didn't follow his instruction and it went down to
18 nothing.

19 Q Was there any conversation at that time, sir,
20 concerning what arrangement could be entered into between
21 you and Acton on the one hand and Mr. Segal on the other?

22 A Yes. Mr. Segal would have half of the stock that
23 was collected for trading in the market, and the other
24 half of the stock would be for operating capital and so forth
25 for Pioneer.

1 mmh10
2 Q Were any amounts of money discussed?

3 A Yes, only one, and that was that Mr. Segal would
4 provide \$500 operating capital for the mine to get it
5 in operation.

6 Q Now, at that meeting, sir, was there any conver-
7 sation concerning how Mr. Segal would operate? What he
8 would do with the stock? What his manner of operations
9 were?

10 A As best I understood it and recollect it, he
11 would take this stock, he would determine how much it
12 would open for, however he did this, and that he would
13 support the stock to make sure it did not decline in value.

14 Q Sir, was anything said concerning other brokers
15 or buying that would be involved?

16 A Only the fact that Mr. Segal had had a lot of
17 experience and background and that he had a number of
18 brokers that believed in him and a number of former stock-
19 holders or whatever, that if he were involved in the stock
20 they would support it also based on his past performance.

21 Q Was anything said concerning what you would have
22 to do in connection with this arrangement or not have to
23 do?

24 A Yes. Mr. Segal would provide the operating capital
25 for the company and, therefore, the other half of the stock

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Clegg-direct

was not to be sold at any time without his permission or him actually selling it if we did that, that it could be used for loan purposes, but it was not to hit the open market.

Q Was anything said, sir, concerning why the stock should not be sold?

A Well, it would depress the price of the market if it were all thrown in at once.

Q Was there any question or discussions concerning where the outstanding stock was at that time? Specifically, was a shareholders' list referred to?

A Yes.

Q Tell the court and jury about that.

A We reviewed a current list of stockholders and how much of each stock had been recovered of the list and how many were dead or deceased or unable to find.

Q Do you recall any specific conversations about that by Mr. Segal?

A Yes, that there was one outstanding holder left that had to be gotten in that had a very large amount of stock.

Q Do you recall who that was?

A Van Der Steen, a hundred thousand shares.

Q Do you recall anything further that was said at

1 mmhl2
2 that time?

3 A Only generally, that Mr. Segal would take it
4 from here, that he had to finalize the acquisition of
5 Precise Power and getting the Van Der Steen stock and then
6 he would begin trading the stock.

7 Q Was any agreement reached at that time between
8 you and him?

9 A Just the one I mentioned previously.

10 Q Do you recall the next meeting that you attended
11 at which Mr. Segal was present?

12 A I believe it was in Reno.

13 Q Who was present and about how long after the
14 previous meeting did that occur?

15 A To the best of my recollection I believe it
16 was about some time in October and it was a week before
17 the stock started trading and we had a shareholders' meeting.

18 Q Sir, let me stop you now and ask you, do you recall
19 a meeting at the Century Plaza Hotel?

20 A I do remember a meeting at the Century Plaza, but
21 I'm not sure whether it was before or after this.

22 Q Would you tell us about the Century Plaza Hotel
23 meeting? Would you tell us, sir, who was present as best
24 you can recall and what occurred.

25 A I only remember Mr. Segal. He had one or two

gentlemen with him. It was on a Sunday afternoon because there were football games on, and I think it was just like a recap meeting of what we had gone over before.

Q Do you recall, sir, who was present, apart from Mr. Segal and any persons who were with Mr. Segal, who else was present besides yourself and Mr. Acton?

A I don't remember anybody else.

Q Was anything said, sir, concerning control of the stock?

MR. DOYLE: I object to the leading nature of the interrogation.

THE COURT: Overruled.

MR. WALKER: I object to the characterization as interrogation.

THE COURT: Direct his attention to the subject matter.

Q Do you recall any discussion concerning the control of the stock at the Century Plaza Hotel?

A What do you mean by control?

Q Does my asking you that question trigger in your mind a discussion of a meeting?

A Only that all the stock should be with Mr. Segal so that other stock would not come in and deflate the price of the stock once it was trading.

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Clegg-direct

Q Did Mr. Segal say that at that meeting?

A Yes.

THE COURT: You say all of the stock? What do you mean all of the stock?

THE WITNESS: All of the outstanding stock that had been purchased from the old shareholders.

THE COURT: What percentage of the stock of Pioneer was that?

THE WITNESS: I'm only guessing. It was probably 70 per cent.

THE COURT: You say guessing? Is that your best estimate?

THE WITNESS: My best estimate.

MR. WALKER: Your Honor, I think we can be very precise on that when I show him all the documents.

Q Did the term "shoe box" come up?

A Yes, it did.

Q Tell us, sir, what was said concerning shoe box?

A Only Al used a phrase, that he had to keep the shoe box to be able to keep the price of the stock where he needed it or wanted it.

Q What, sir, was meant by the word shoe box to your knowledge?

MR. DOYLE: Objection, your Honor. Operation of

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Clegg-direct

his mind.

THE COURT: Sustained.

Q Could you tell us more specifically what this conversation was? Spell it out? What do you recall him saying?

A About the shoe box?

Q Yes.

A It was a term I never heard before.

THE COURT: Tell us what was said. The jury can determine.

THE WITNESS: Just, namely, the control of the stock so that our stock or other people's stock won't be hitting the market except on a planned basis.

Q Was anything said, sir, concerning how sales would be affected should anyone want to sell?

A The rest of the stock that had been gathered should all go through Al only.

THE COURT: We will take our luncheon recess at this point. 2:15.

Don't talk about the case; don't let anybody talk to you about it. And I must also instruct you not to try to eat in the lunch room upstairs. That is reserved for employees of the courthouse, and you might very well have some embarrassing contacts there. There are lots

of restaurants in the area. Have a good lunch.

(Jury excused.)

THE COURT: We will resume, Mr. Walker, and
counsel, at 2 o'clock for the matter that does not concern
the jury.

(Luncheon recess)

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2 AFTERNOON SESSION

418

3 (2.05 p.m.)

4 (Jury not present.)

5 MR. WALKER: Your Honor, I don't know where the
6 witness is now. He was told to be here at 2 o'clock.

7 Mr. Doyle, do you press your objection at this
8 point?

9 MR. DOYLE: Your Honor, let me see if I under-
10 stand the record correctly.

11 What I understood the witness was going to say
12 was that he had a conversation with Mr. Scardino, not in
13 Mr Segal's presence, in which Mr. Scardino told him about
14 another situation that Mr. Segal was involved in which
15 concerned the raising of the value of the stock.

16 Now, it may be that is the same stock that came
17 out in the conversation that Mr. Clegg said Mr. Segal told
18 him about later on, in which case that particular point
19 is arguably moot. Although I think I would still press
20 the objection, your Honor, because I think it is, although
21 somewhat cumulative, I think it is also somewhat prejudicial,
22 and may not --

23 THE COURT: What is the mystery? There is
24 nobody here. Why can't you tell me what it is out loud?

25 MR. DOYLE: I think it is Acme, as I understand.

1 MR. WALKER: Yes, the witness did testify --

2 THE COURT: Tell me what he said.

3 MR. WALKER: My understanding, your Honor, is
4 that the raising of the price by Segal and Acme was
5 mentioned to this witness by Scardino out of Segal's
6 presence.
7

8 THE COURT: What did he say specifically?
9 What is the conversation he will testify to?

10 MR. WALKER: That Segal is a stock man, a man
11 who could move stock, something to that substance, and that
12 he had done it in the past with Acme and taken the price
13 up, between Scardino and Clegg. Substantially, the same
14 as Clegg testified to in his direct conversation with Segal
15 before the jury. Simply that Segal was not present at
16 the first conversation.

17 THE COURT: It seems to me it is highly material
18 to the subject of knowledge. You certainly would be the
19 first to agree the Government has to show knowledge or they
20 should have known what was going on here.

21 MR. DOYLE: I think this was a hearsay state-
22 ment before Mr. Segal, apparently, was in a position to
23 have even known about the conspiracy in which Scardino
24 made statements out of his presence.

25 THE COURT: Of course, that is subject to con-

nection. You know, if the jury finds he later joined the conspiracy, it is certainly part of the alleged conspiratorial agreement, and I think it surely should come in, subject to connection.

MR. DOYLE: Very well.

THE COURT: All right, let's get the jury in.

MR. WALKER: All right.

THE COURT: We don't need to conduct the voir dire?

MR. DOYLE: No, your Honor.

MR. WALKER: Your Honor, the witness was in the bathroom.

(Pause.)

M I C H A E L W. C L E G G , resumed.

THE COURT: We will not be sitting this Friday afternoon. There will be no afternoon session.

MR. WALKER: Very well, your Honor.

THE COURT: It is my motion calendar.

(Jury present.)

DIRECT EXAMINATION (Continued)

BY MR. WALKER:

Q Mr. Clegg, I want to take you back to the time when you first discussed Mr. Segal with Mr. Scardino.

Do you recall that incident in Reno?

1

2

A Prior to meeting Segal or after?

3

Q Yes.

4

A Prior to meeting Segal?

5

Q Yes.

6

A Yes.

7

Q Where was that? Where did you have the con-

8

versation with Mr. Scardino?

9

A At the Riverside Hotel in Reno.

10

Q And who was present?

11

A I'm not sure of anybody besides Scardino and myself.

12

13

Q Do you recall, sir, that conversation, what was

14

said at that time?

15

A I explained to Mr. Scardino the predicament we

16

were in as regards Pioneer being --

17

Q What did you say to him?

18

A "That we are several months behind schedule on

19

the stock trading; do you have any ideas on how somebody

20

can get a public company trading, retrading?"

21

Q What did he say?

22

A And he said that he had a partner in the Riverside

23

Hotel who was very adept at that, and he suggested I get in

24

contact with Mr. Segal.

25

Q Do you recall anything further that Mr. Scardino

1 jks

Clegg-direct

2 said at that time about Mr. Segal or what he could do?

3 A Other than that he was adept at what I needed
4 done.

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Q I show you this document, 3516, and ask you to read to yourself the last half of that page and ask whether that refreshes your recollection.

MR. NIRSCHNER: Page number?

THE WITNESS: Page 17.

MR. BAPE: I will object if he is using this to refresh the witness' memory. He testified that was all that was said.

THE COURT: No, he testified that he didn't recall.

Q Mr. Clegg, does that refresh your recollection as to what was said at that time?

THE COURT: As to what else was said.

A Mr. Scardino said that Al Segal was one of the best in the country at selling or whatever, trading stock and that he had a great deal of money himself and would probably be able to help the mining operation and so forth if he liked the deal.

Q Does that exhaust your recollection of that conversation?

A Yes, it does.

Q Do you recall a meeting or on about October 23 1971, in Reno?

MR. DOTTE: I think it should be '69.

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Q '69, I'm sorry, October 23, '69, in Reno, and I show you this document and ask if this refreshes your recollection.

MR. DOYLE: Your Honor, it has not been shown that his recollection needs refreshing.

THE COURT: Overruled.

Q Do you recall on October 22, 1969, a meeting?

A Yes, I believe this was the meeting at the Napes Hotel where we had our shareholders' meeting.

THE COURT: I'm sorry, Mr. Doyle, I understood Mr. Walker asked whether that exhausted his recollection as to, I assume, the conversation, the meeting they were talking about. Your objection is proper. I take it you are going into another meeting?

MR. WALKER: Yes.

THE COURT: If you want to refresh his recollection lay a foundation. Without a signal I don't know what is going on.

Q Directing your attention now past the meeting in Dallas and past the meeting at the Century Plaza Hotel to a meeting in Reno, Nevada, and I ask you, sir, if you recall a meeting on or about October 23, 1969, in Reno Nevada?

A Yes, I do.

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Q Sir, can you tell us what occurred at that meeting, if you can recall?

MR. DOYLE: And who was present.

THE COURT: Yes, it would help.

Q Do you recall who was present?

A Yes.

Q Who?

A This was the shareholders' meeting where Mr. Frazier, our attorney -- this the meeting you are referring to --

Q If I can show you another document, sir, apparently--

MR. NEWMAN: Objection, your Honor. He is not letting the witness finish.

THE COURT: Sustained.

Q Do you recall, sir, a meeting in which stock was transferred?

A Yes, I do.

Q And specifically, sir, do you recall the date? Yes or no.

A Yes.

Q What date?

A October 23rd.

Q Will you tell us, sir, what happened on that day?

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Clegg-direct

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2 A At the transfer agency?

3 Q Yes.

4 A At the transfer agency a number of shares were
5 brought in from the former shareholders and transferred
6 to Francine Zahl and some of the people that I had sold
7 stock to.

8 Q Who was present at the transfer agency?

9 A To the best of my recollection, Eumey Sutton
10 and Ted Frazier and Al Segal.

11 THE COURT: Where was this transfer agent?

12 THE WITNESS: Reno, Nevada, on one of the main
13 streets.

14 Q Was anybody there representing the transfer agent?

15 A Yes.

16 Q Who?

17 A Hayes Shaeffer and Duane Knigge.

18 Q Specifically, sir, I show you Government's
19 Exhibit 1A in evidence and ask if you can identify that
20 document. What is it?

21 A It is a transfer order signed by me.

22 Q Does your signature appear on the second page?

23 A Yes, it does.

24 Q Will you tell the court and jury what happened
25 in connection with the transfer?

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Clegg-direct

1
2 A This was the precipitation of Mr. Segal's taking
3 stock back to New York to begin trading, for which he
4 was issued 30,000 shares in the name of Francine Zolt.

5 Q What was the actual name that it was issued in?

6 A Oh, Zolt, which is a misspelling.

7 Q How many shares were issued to Francine Zolt?

8 A 30,000.

9 Q What were the other shares that were issued?

10 A 4,500 to Earl Morgan, 20,000 to Emma Marion,
11 my father-in-law, and 2050 to Ralph Kaighan.

12 Q What was done with the other 26,550 shares, the
13 Morgan and Marion and Kaighan stock?

14 A That was delivered to Mr. Segal to take back
15 to New York with him, inasmuch as these three people had
16 invested --

17 Q Did you have a conversation, sir, with Mr. Segal
18 at that time?

19 A Yes, I did.

20 Q Who was present at the conversation? Who
21 participated?

22 A Mr. Acton, Mr. Segal and myself.

23 Q What was the conversation that you had at that
time with Mr. Segal?

A These three stockholders had invested money in

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1 the company many, many months before. They wanted to sell
2 their stock immediately, as soon as it started trading.
3 Mr. Segal said that he personally would take the stock back
4 with him and would feed it into the market at his rate,
5 but it would be done immediately, and he sent a receipt
6 for this stock to us.
7

8 Q Was there any discussion at that time concerning
9 whether or not you could sell the stock or should sell the
10 stock?

11 A I don't believe it was about me or Burnes, speci-
12 fically; mostly, that any stockholder, former stockholder
13 or present stockholder, if it would be in any way in our
14 power, we should tell them not to sell the stock, except
15 through Mr. Segal.

16 Q Did Mr. Segal take the 30,000 shares issued in
17 the name of Francine Salt and the 26,550 shares issued
18 in the names of Morgan and Mariot and Kaighan that day
19 to New York?

20 A He took that with him when he left.

21 Q Was there any further conversation concerning
22 his taking the stock?

23 A Only in so much as I had given them their
24 addresses and communicated the message that these three
25 people particularly should sell as quickly as possible

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because they wanted their money back.

Q To your knowledge, sir, was any money ever remitted to Kaighan, Mariot or Morgan by Mr. Segal?

A Not by Mr. Segal, no.

Q Was any money remitted to you by Mr. Segal in respect of that stock?

A No, it was not.

Q Did you subsequently reimburse any of these individuals yourself?

A I reimbursed Emmanno Mariot in full and Herb Kaighan in full for the total amount of money that they had invested out of my own pocket, and Bill Morgan, we gave him the \$25,000 note from American Aluminum and some other collateral to reimburse him for his money that he had invested.

Q After that date, sir, what did you do?

A There was one other thing that happened at that meeting, and that was the \$20,000 check he gave to Sheldon Lamb.

Q Will you tell us, sir, what happened in that regard? Was there a conversation and who was present?

A Mr. Lamb, Mr. Segal, Mr. Acton, myself, and Mr. Frasier, our attorney in which Mr. Lamb was not going to put the mine into Picard's hands he had at least \$20,000

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2 operating capital immediately, and Mr. Segal wrote him
3 a check for \$20,000 to cover that operating capital. He
4 also wrote a check to the transfer agency to clear up
5 any past debts that Pioneer developed over the years.

6 Q Do you recall the approximate amount of that
7 check to the transfer agent?

8 A Approximately five or six thousand dollars.
9
10
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Q

Now, directing your attention to October 29th, approximately six days later, do you recall a meeting on that day?

5

A

At the transfer agency for --

6

Q

Any meeting?

7

A

Correct, we had a meeting.

8

Q

And what was that meeting in respect of?

9

MR. DOYLE: May we have a date?

10

MR. WALKER: October 29th.

11

MR. DOYLE: I'm sorry -- a place and a list of

12

who was present at the meeting.

13

Q

Can you tell us where the meeting occurred?

14

A

Reno, Nevada.

15

Q

Who was present?

16

A

At the Mapis Hotel. People present were Mr. Frasier, Mr. Jay Walker, Mr. Don Ross, Burney Acton, myself, and I don't remember if Mr. Segal was there or not. The nature of the meeting was the acquisition of Precise Power into Pioneer Development.

21

Q

Can you identify these two documents, 3-A and

22

3-B?

23

A

Yes, these documents are the records whereby we transferred that company into Pioneer and issued stock for it.

25

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Clegg-direct

433

Q You issued 500,000 shares of restricted Pioneer stock, is that correct?

A That's correct.

Q Sir, I show you Government's Exhibit 1-A-1 for identification, a transfer record, and ask you if you can recognize those names any of those names on the front of it?

A I recognize George Kastner Roy Lewis only.

MR. WALKER: I offer this document, your Honor.

MR. DOYLE: No objection.

THE COURT: Received.

(Government's Exhibit 1-A-1 was received in evidence.)

Q Mr. Clegg, who was Mr. Kastner?

A Mr. Kastner was a friend of Mr. Jay Walker, and he was also one of the salesmen for our company.

Q And who is Mr. Roy Lewis?

MR. DOYLE: Excuse me, one of the salesmen for whom?

THE WITNESS: An alarm company that Burney Adams.

THE COURT: What company?

THE WITNESS: An alarm company.

MR. DOYLE: Alarm company?

And Roy Lewis was the president of Pioneer at the

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time that was issued.

Q Is this document dated May 19, 1969?

A Yes, it is.

Q Sir, was the alarm company connected in any way with Pioneer?

A No, it was not.

Q Now, sir, following October 29th, did you have a conversation with anyone concerning Van Der Steen stock?

A Somewhere in there.

Q Before we get to that, sir, I want to show you Government's Exhibit -B in evidence and ask if you can identify that document, dated October 30, 1960?

A. Yes.

Q What is it?

A That is the transfer order signed by me, transferring stock into other stockholders that had invested in Pioneer during the spring and summer months.

Q Was this clock sent to you, sir?

A Yes.

Q And is the letter addressed to you?

A Yes, it was. The transfer agent wanted an address for all these people and I didn't know their address, so I just said NO. ONLY COPY AVAILABLE

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2 Q Sir, specifically, the October 23, 1969
3 transfer record that was also addressed to you, was it
4 not?

5 A Yes, it was.

6 Q I show you another transfer record, 1-C for
7 identification, and ask you if that document is a transfer
8 record reflecting the issuance of 600,000 restricted shares
9 of stock to Precise Baker?

10 A Yes, it is.

11 MR. WALKER: I offer it.

12 MR. DOYLE: No objection.

13 (Government's Exhibit 1-C was received in
14 evidence.)

xx 15 Q I show you another transfer record, Government's
16 Exhibit 1-D for identification, and ask you if you can
17 identify that document?

18 A Yes.

19 Q What is it?

20 A It is a transfer request to three other stock-
21 holders of Pioneer.

22 MR. WALKER: I will offer it.

23 MR. DOYLE: No objection.

24 (Government's Exhibit 1-D was received in
25 evidence.)

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1 Q Is this document also addressed to you, sir?

2 A Yes, it is.

3 Q And, sir, can you tell us, with respect to 1-B
4 in evidence who the individuals are who are set forth on
5 this sheet?

6 Who is Herb Kaighan?

7 A Herb Kaighan was a classmate of mine in college.

8 Q Did he receive 4500 shares?

9 A Yes, he did.

10 Q Tom Von Goetzen, did he receive 1200 shares?

11 A Yes, he did.

12 Q And who is he?

13 A He is just a friend of Warren Brown's.

14 Q Jack Sonnenliter, did he receive 100 shares?

15 A Yes, he did.

16 Q Who is he?

17 A I think he was a pilot instructor for Warren

18 Brown.

19 Q And Dolores Morgan, did she receive 4500 shares?

20 A Yes, she did.

21 Q And was she related to the other William Morgan?

22 A Ex-wife.

23 Q And was she a friend of yours?

24 A Yes.

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2 Q Bonnie Madison, did she receive 8000 shares?

3 A I presume. I don't know who she is.

4 Q That name was not registered with you?

5 A No.

6 Q Was her name registered with the same address
7 that all of the other names were given?

8 A Correct.

9 Q Was that P.O. Box 582?

10 A Right. I think she must have been one of the
11 old stockholders or something. I don't -- I just don't
12 remember the name.

13 Q And why was P.O. Box 582 placed on these various
14 names?

15 A Because the transfer agent wouldn't issue the
16 stock unless he had a record of address, and I didn't know
17 any of these people's exact address so I gave my address
18 for a record, mailing record.

19 Q Now, with respect to Mary Harold, did she receive
20 750 shares?

21 A Yes, she had.

22 Q And was that also sent to that same address?

23 A Correct.

24 Q And was another certificate issued to the same
25 character in the amount of 500 shares?

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2 A Correct.

3 THE COURT: I am afraid, Mr. Walker, you and
4 the witness are having a tote-a-bone. Nobody else can
5 hear it.

6 MR. WALKER: I'm sorry, your Honor.

7 Q Finally, was a share certificate issued to
8 Warren Brown in the amount of 4500 shares?

9 A Correct.

10 Q So was the total amount issued 26,400 shares
11 on that day?

12 A That's correct.

13 Q That is October 30, 1969?

14 A Correct.

15 Q As reflected in Government's Exhibit 1-B in
16 evidence.

17 Q Were the shares that were issued shares which
18 had been accumulated from old shareholders?

19 A Correct.

20 Q Sir, with respect to Government's Exhibit 1-D
21 in evidence, does that reflect the issuance of 5500 shares,
22 1000 shares going to Charles Morgan?

23 A Correct.

24 Q 3500 shares going to Carolyn Hunt?

25 A Correct.

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Q And 1000 shares going to Frank LaVan?

A Correct.

Q All on October 30, 1952?

A Correct.

Q And, sir, who was Carolyn Hunt?

A Carolyn Hunt was an old stockholder who had donated so much of her stock and she was to get 10 per cent back.

Q And Frank LaVan?

A One of our salesmen.

Q And was this stock received in from old shareholders?

A Correct.

THE COURT: At the time you acquired Pioneer was the stock in Pioneer being traded at all?

THE WITNESS: Your Honor, I'm not familiar. I wasn't involved at that point when it was being acquired.

THE COURT: At the time that you did become familiar with it, and before you met with Serval, was this stock being traded, as far as you know?

THE WITNESS: As far as I know. Your Honor, it was not being actively traded.

THE COURT: Was there anyone could look to to find a quotation of this stock?

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Clegg-direct

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THE WITNESS: No, sir, not that I know of.

Q Now, Mr. Clegg, I show you Government's Exhibit L-8 in evidence and ask you if you can identify that.

A Is that a transfer record, sir, reflecting a delivery to you of your own stock in the Pioneer?

A That is my address, but I don't recognize the first two names. That one neither.

Q Was this stock received from these individuals, sir, on the front page and issued to the people on the second page?

A Okay. Yes.

Q And is that dated November 6, 1969?

A Correct.

Q Does that reflect the receipt in of 20,500 shares of Bernell Erskine and Virginia Erskine, 2000 shares, and another certificate for 500 shares. Leo Freeman for 4000 shares, Marvin Kartner and George Kartner, for 10,000 shares, and G. Ann Wilder for 4000 shares?

A Correct.

Q For a total of 20,500 shares, is that correct?

A That's correct.

Q Is it your understanding that these individuals were old shareholders?

A I don't know. I don't know if anything was done.

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1 ks10
2 Burney Acton, not by me.

3 Q Now, sir, are you familiar with the issuance
4 of the stock?

5 A I am familiar with one name on there, Tony
6 Scardino.

7 Q Does that reflect that Mr. Scardino got 5000
8 shares?

9 A Yes, it does.

10 Q Are you familiar with the top name as well?

11 A Oh, yes, Francine's Zahl.

12 Q Did she get 5000 shares?

13 A According to the record there, yes.

14 Q Did you, with respect to the 5000 shares, issued
15 in the name of Mr. Scardino, did you have a conversation
16 with anyone concerning that issuance at that time; yes
17 or no?

18 A I'm not sure.

19 Q Did you have a conversation, sir, with anyone
20 regarding the borrowing of money for Pioneer at or about
21 that time, using Pioneer stock to borrow money?

22 A Oh, yes. Yes. My conversation was with
23 Burney, who was conversing with Tony Scardino about setting
24 up a loan for Pioneer.

25 MR. BOYLE Excuse me. I can't hear.

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1 THE WITNESS: My conversation was with my
2 partner, Burney Actor who was dealing with Tony Scardino
3 about setting up a loan for Pioneer Development, for operat-
4 ing capital'

5 Q Where did you have this conversation and when,
6 sir?

7 A I have no idea.

8 Q Was it on or at about November 6, 1969?

9 A I don't know for sure.

10 Q Can you tell us who was present at the conversa-
11 tion?

12 A It's just a vague recollection of Burney and I
13 talking some time in there about getting operating capital
14 for the mine through a loan on the stock.

15 Q Do you recall, sir, what was said by Mr. Actor
16 and yourself in the discussion that you had?

17 A Yes. Tony Scardino had arranged to have a loan
18 funded to Pioneer Development through the collateral of
19 free trading Pioneer stock which would be put in some sort
20 of a Catholic College Trust Fund, and that to my recol-
21 lection, his partner Mr. McKibbin, was handling this.

22 Q Did you deal with Scardino or McKibbin directly,
23 yourself?

24 A No, I did not.
25

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Q Now, sir, did there come a time when the stock in the name of Bernard Van Der Steen was discussed as a problem to be dealt with?

A Yes, Mr. Segal wanted that stock --

Q Let me stop you.

MR. DOYLE: May we have a specific conversation?

MR. WALKER: Yes.

Q Let me stop you and ask you if you can pinpoint the approximate time and place of that conversation and who was present.

A It's just a general recollection that we discussed either at the Century Plaza or on the phone.

Q And who do you recall discussing it with?

A Mr. Segal.

Q What was the discussion?

A That Mr. Segal would pay for the stock if we could convince the attorney for the trust of Mr. Van Der Steen, for his estate, to sell the stock for, like, 10 cents a share, which was accomplished, and Mr. Segal then wired the money directly to Mr. Van Der Steen's estate.

Q How do you know that? Did you have conversations with anyone?

A Yes, with Mr. Segal that he would wire it and then with the attorney that he had received it. He did

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not release the stock until he had the money.

THE COURT: Did you participate in acquiring any of the stock from the old shareholders?

THE WITNESS: Only this one occasion, Van Der Steen estate.

THE COURT: Who did you deal with?

THE WITNESS: The attorney for Mr. Van Der Steen estate.

THE COURT: What was your pitch to him to buy the stock for 10 cents a share?

THE WITNESS: That the company was about to be trading on the open market again, that we needed the stock in to acquire assets for the company, operating capital for the company, and that if he would give his stock to the company, he would either get 10 cents a share for it or 10 per cent of it back, whichever he wanted, preferred, and that the stock that he got back would be reissued and in this case his attorney preferred the money.

THE COURT: Did you say anything about what would happen to the part of the stock he retained?

THE WITNESS: Well, that we were trying to acquire valuable assets and that his 10 per cent would be worth more than his hundred per cent was worth at that time.

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Clegg-direct

T4 1 mmh 1
2 Q Well, do you recall whether or not the lawyer
3 that you negotiated with with respect to the Van Der Steen
4 stock retained any stock?

5 A No, he didn't.

6 Q He didn't retain any stock?

7 A I don't recall him retaining any stock.

8 Q What did you do when you received that stock?

9 A As I recall I went to the transfer agent and
10 it down. I don't remember the specific amounts, but at
11 least half of it went to Mr. Segal.

12 Q I show you Government's Exhibit 1F in evidence,
13 a document dated November 6, 1969, in evidence and
14 1-I in evidence, H and I being dated November 14, 1969,
15 all three being transfer records.

16 Does that refresh your recollection as to what
17 happened to the Van Der Steen stock?

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18 A On the first transfer on November 6th I signed
19 a transfer order that a certificate of a hundred thousand
20 shares be broken into 50,000 shares for Francine Zuhl,
21 25,000 shares for Jay Walker, and the balance to stay in
22 the transfer agency, and then on the 14th Mr. Acton assigned
23 a thousand shares to Catherine Price and 6,000 shares to
24 Terry Scardino, and he also assigned the additional 18,000
25 to Jay Walker, which made a total of a hundred thousand

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Clegg-direct

1 shares.

2
3 Q Who was Jay Walker at that time?

4 A Jay Walker was involved with Pioneer from the
5 inception, with Mr. Roy Lewis and Mr. Teton principally
6 in acquiring assets for Pioneer.

7 Q Did Mr. Jay Walker actually own any of this stock
8 or take any of this stock for himself?

9 A Well, yes, I believe he had some stock himself.

10 Q Apart from the 40,000 shares?

11 A No, not apart from the Van Der Steen, no.

12 Q I show you Government's Exhibit 14 for identifi-
13 cation and ask you if you can identify that.

14 A This is a letter from me to Mr. Jay Walker
15 regarding the 42,000 shares of Pioneer Development stock.
16 It says, "Dear Mr. Walker" --

17 Q Is that your letter? Did you sign that letter?

18 A That is my signature.

19 Q Did you send it to Mr. Walker?

20 A I assume so.

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21 MR. WALKER: I offer the document.

22 MR. DOYLE: No objection, your Honor.

23 MR. KIRSCHNER: May I see it for just a moment,
24 please. No objection.

25 (Government's Exhibit 14 received in evidence.)

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Q Do you have any recollection of the conversation with Mr. Walker concerning this letter?

A I really don't.

MR. WALKER: May I read the letter to the jury?

(Mr. Walker reads from Government's Exhibit 14 in evidence to the jury.)

Q With respect to the 42,000 shares referred to in this letter, 42,000 out of the 43,000 shares were issued in Mr. Walker's name in connection with the Van Der Steen transaction?

A I presume so.

Q Do you have any knowledge, sir, of a thousand-share block, a thousand shares of Pioneer in the name of Mr. Jay Walker being sold off at Grimes, Hooper & Messer in Los Angeles?

A Yes, I do.

Q Did that occur some time following these transactions?

A I don't know.

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Q Did there come a time, sir, when you received a telephone call from Mr. Segal concerning the opening of the stock in the market?

A If there is, it was on the day that the stock opened and he was just calling to tell me that the stock

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Clegg-direct

1 was now trading.

2 MR. DOYLE: May I ask that it be stricken?

3 THE COURT: Strike it.

4 Q Do you recall any such conversation?

5 A Yes.

6 Q When do you recall it occurring and what kind
7 of a conversation was it?

8 A I don't recall, but whenever the stock was
9 trading Mr. Segal called me and informed me that it was
10 now trading in the open market.

11 Q Did he say anything further?

12 A I don't recall.

13 Q Was anything said concerning the price or the
14 volume of activity?

15 A The price, yes, he told me that it opened at \$5
16 a share.

17 Q Directing your attention to approximately the
18 same time, did you receive a call from someone in connect-
19 with the check for \$20,000 that Mr. Segal had written?

20 A Yes, Mr. Lamp contacted us to tell us that the
21 check had bounced and that he had written checks on it
22 which were honored and now he was in trouble because the
23 check from Mr. Segal was no good.

24 Q When you got that information what did you do?

mmh5

1 I relayed it to Mr. Segal.

2 Q Will you tell us how you relayed it to Mr. Segal?

3 A Picked up the phone and called him.

4 Q Do you recall where you were?

5 A No.

6 Q What was that conversation you had with Mr.
7 Segal?

8 A Please cover this check immediately that he sent
9 to Mr. Lamb.

10 Q What did Mr. Segal say?

11 A He said he would run it through again or something
12 like that.

13 Q Did you ever recover the proceeds of that check
14 the \$20,000 check that you had gotten from Mr. Segal?
15 Was that check ever cashed to your knowledge?

16 A It was never made good to Mr. Lamb. We made the
17 check good to Mr. Lamb.

18 Q Was Mr. Segal's check ever made good by him?

19 A No, it was not.

20 Q To your knowledge was the check redeposited
21 after you spoke to Mr. Segal?

22 A I don't recall.

23 Q Did you give any instructions in that regard?

24 A Yes.

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1 mmh6
2 Q To whom?

3 A To Mr. Laro to just redposit it and it would
4 probably be all right.

5 Q Following the opening of trading in the stock
6 did you have any further conversations with Mr. Segal?

7 A Yes. Every day Mr. Segal would call me, tell
8 me what was happening with the stock, and I would ask him
9 what happened to the stock that he took back to sell for
10 those three individuals, why were they not getting their
11 proceeds.

12 Q What was the conversation? What did Mr. Segal say?

13 A It was just a stall every day.

14 MR. DOYLE: Objection.

15 THE COURT: Strike it out. What did he say?

16 Q Do you recall what he said?

17 A That it would be sold soon, very soon, tomorrow
18 the next day, and it was never sold.

19 Q Did you have any conversations with Mr. Segal
20 during this period of time concerning other brokerage
21 houses?

22 A I don't recall any specific conversations about
23 the brokerage houses.

24 Q I show you Government's Exhibit 3516 for identi-
25 fication and ask if that refreshes your recollection, be-

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the two paper clips. Just read it to yourself.

MR. NEWMAN: Tell us the page.

THE WITNESS: Page 45.

MR. NEWMAN: Thank you.

THE WITNESS: This is the conversation I had with Mr. Segal back in Dallas.

Q I'm sorry. It was my mistake.

Does that refresh your recollection as to something additional that was said in Dallas?

A Yes. Mr. Segal had mentioned he had three companies that he dealt with that would trade the stock for him, which was First Philadelphia and Economic Planning, and there is another name, Shelly-Blitz, which doesn't make any sense.

Q Sir, did he say what his relationship was with these firms?

A Only that they would trade as he directed them.

Q Returning, sir, to the period of time after the market had opened in the morning, did you have any conversations with Mr. Segal concerning any selling that was going on at that time?

A Yes. Every time that some old stockholder or new stockholder, as the case may be, would sell, Mr. Segal would call me and ask "Who is to and so," and "Do you know

图 2-3

Clegg-direct

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them?" And "Why are they selling their stock?"

Q Was anything further said about that at that time?

A Well, he asked me if I had any control over these people to ask them not to sell their stock, and in every instance I didn't have any control over them.

THE COURT: How many of these old stockholders were there?

THE WITNESSES. To quote Mr. Segal, he said there were coming out of the woodwork.

THE COURT: I am asking you at the time you got into the picture how many old stockholders there were.

THE WITNESS: Dozens.

THE COURT: It doesn't help me much. Was there 1000
200? 300? How widespread was this Pioneer stock?

THE WITNESS: Oh, I see. I think we have a list of the old stockholders, but I think there is about a hundred or 200 people all told, at least.

THE COURT: And in the main were they all out in the West and in Colorado?

THE WITNESS: Yes.

Q Mr. Clegg, I show you Government's Exhibit 2 for identification. Is that a shareholders' list dated May 14, 1969?

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1
2 A Yes, it is.

3 Q Does that accurately reflect the number of share-
4 holders existing as of that time?

5 A That is what it says.

6 Q Do you recall that being a document --

7 A I was not involved with the company then.

8 MR. DOYLE: I believe that document is in evidence.

9 MR. WALKER: It is.

10 THE COURT: If it is you can tell us, you might
11 enlighten us a little bit.

12 Q Did you, sir, during the fall of 1969 have any
13 conversations with Mr. Scardino concerning money for the ...

14 A Almost all the conversations with Mr. Scardino
15 were through Burney Aston. I don't specifically remember
16 any conversation between Mr. Scardino and myself.

17 Q Sir, were you aware of the moneys that were being
18 received by the A.C.E. Enterprises account at the
19 Citizens Bank?

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20 A Yes, I was.

21 Q Sir, directing your attention to the end of
22 December, 1969, did Pioneer acquire some surplus debentures
23 from Pioneer Casualty

24 A Yes, it did.

25 Q Did you do anything in respect with those

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Clegg-direct

debentures?

A Yes. The debentures were acquired with the purpose of raising capital for the operation of the mine and they were accompanied by a financial statement showing in excess of \$14,000,000, a personal financial statement of the owner of the company from whom we purchased them, Mr. Don Shepherd, and I went to two or three banks in the area trying to get a loan on those debentures for the mine.

Q Was the acquisition of these Pioneer Casualty debentures effected by issuing 200,000 restricted shares of Pioneer Development Corporation stock to Mr. Shepherd?

A Yes, they were.

MR. DOYLE: Objection to the leading.

THE COURT: Sustained.

Q Can you tell us, sir, what the terms of this transaction were?

A We acquired the debentures by issuing the stock.

Q How much stock and in what form?

A 200,000 shares in one certificate.

Q Who received that certificate?

A Mr. Shepherd.

Q Do you recall what banks you went to trying to raise money with these debentures?

A I don't recall specifically, other than they

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were the banks that I were doing with at that time.

Q Were you successful in raising any money with these ventures?

Q No, I was not.

Q Up to that point had there been any commercial production in connection with the Mercury mine, Lone Tree Mining?

2. No, there is not, not as a protection said

Q Were any proceeds or profits or revenues derived from Precise Power at any time?

A No.

Q Directing your attention to the period between Christmas and New Year's, do you recall on an occasion when you were walking outside of your house you met a man

A Yes.

2 Would you tell us, sir, what time of day it was
and who was present?

48u/LA It was early in the morning. I was walking out of my house to go to work and I met Mr. Zuber right onto a little path going up to my house, and the conversation was that Mr. Zuber said that he was representing Mr. Sagal that there was money and Mr. Sagal because the stock had been sold and that he was there to collect the money for

~~has not been sold anywhere in the State of~~

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430

1 A Yes, it was \$200,000.

2 Q Was anything further said at that point concerning
3 why you owed the money?

4 A I don't think it was with Mr. Zuber, because
5 I called Mr. Segal immediately to find out what was
6 happening, and Mr. Segal told me ~~that~~
7 ~~that~~

8 Q Before we got there, sir, what was said? What
9 further was said by Mr. Zuber at that time?

10 A Well, after he got the first sentence out of
11 his mouth why he was there, I said, "There has been a gr-
12 mistake, misunderstanding; something is wrong and I am
13 going to call Mr. Segal now and find out why you are there."

14 Q Do you recall if anything further was said?

15 A Not specifically.

16 Q I show you Government's Exhibit 3532 for identification, page 14, and ask you if this refreshes your
17 recollection? May I point to one sentence particularly?

18 MR. KIRSCHNER: What page?

19 MR. WALKER: Page 14 of Exhibit 3532.

20 Q Do you recall anything further that was said?

21 A Only that Mr. Zuber was-- I don't know as you

22 THE COURT: Please. What was said.

23 Q Just what was said.

24 A Mr. Zuber, in effect, threatened me that if he
25

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didn't get the money --

MR. KIPSCHEID: Objection.

THE COURT: Strike it. What did he say?

THE WITNESS: Like, "You owe Segal this money and if you don't pay it it's not going to be very pleasant for you," or something like that.

Q Did you see anything at that time, sir, in his possession?

A To the best of my recollection I believe he had a gun in his belt, pants, on the side.

Q Did he show it to you on that occasion?

A I don't know if he specifically showed it to me but I saw it.

THE COURT: Was his jacket open?

THE WITNESS: Yes.

THE COURT: Where was the gun?

THE WITNESS: Again, this is very hazy --

THE COURT: Think hard. It is important. Where was it?

THE WITNESS: It seemed to me like it was stuck in his side, back in there, just like the handle was sticking out.

THE COURT: Out of his belt?

THE WITNESS: No, he didn't have a belt on this

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Clegg-direct

time-- I don't recall -- I don't remember.

THE COURT: On the right-hand side.

Q You are referring to his pants?

A Yes.

Q The top of his pants?

A Yes.

Q Do you see Mr. Zuber here in the courtroom?

A Yes, I do.

Q Can you point him out?

A Third from the right side of the table there.

MR. WALKER: May the record reflect the identification, your Honor.

THE COURT: Yes.

Q What did you do thereafter?

A I picked up the phone -- I had a long extension cord on it because I used to work outside the house-- and I took it out and called Mr. Segal in front of Mr. Zuber and asked Mr. Segal why were these visitors here.

Q Where did you call Mr. Segal?

A Probably at his office in New York.

THE COURT: You said "visitors." Was there anybody there besides Mr. Zuber?

THE WITNESS: No. Mr. Zuber was the only one who was there.

1 Q Your recollection is that you called from
2 Los Angeles to New York on that occasion?

3 A Correct.

4 Q What was the conversation that you had with Mr.
5 Zuber at that time? Think very carefully and give us your
6 best recollection.

7 A The best recollection is, "There is somebody
8 here that wants some money about stock," and "What is th
9 all about?"

10 And Mr. Segal explained to me that a great
11 deal of stock had hit the market, originally in the name
12 of Jay Walker, transferred to Tony Scardino, and that
13 he had accused Burney and I of selling this stock, and
14 I said, "No, it had been given to Mr. Scardino to have
15 a loan set up for the company -- which Mr. Segal was aware
16 that we were trying to set up a loan for operating capital
17 for the company -- and that if he wants the money from
18 the proceeds of this stock to go see Mr. Scardino and not
19 me.

20 Q Did you see any other individual with Mr. Zuber
21 on that day?

22 A On that occasion, no.

23 Q Do you recall him meeting Mr. Segal on that
24 occasion or Mr. Finkelman?
25

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1

2

3

A I don't remember if I met Mr. Howard then or

later.

Q I show you Government's Exhibit 1732 for identification, page 13, and ask you if that refreshes your recollection, at the bottom of the page?

7

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A It still doesn't refresh my recollection if that was the occasion that I met Mr. Howard or not.

Q Sir, after you finished with your conversation with Mr. Segal what did you do with the receiver of the phone?

A I believe I handed it to Mr. Zuber for confirmation from Mr. Segal to proceed with checking out the details with Mr. Scardino.

Q Do you remember what Mr. Zuber did after that?

A He left.

Q What did you do?

A Whew! I went back inside and sat down.

Q Did you have any conversations following that with Mr. Acton?

A Yes. Mr. Acton had accompanied Mr. Howard and Mr. Zuber to Sase, and Mr. Acton told me when he came back basically what had happened.

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Q Do you recall receiving a telephone call from Mr. Acton while he was at Reno?

A Yes, I do.

Q And after that telephone conversation did you have a further conversation with him?

A Yes, I did.

Q Where was that conversation?

A I don't recall.

Q About how long after the visit from Zuber to you did you have that conversation?

A I think Sweeney called me every night when he was in Reno, and then when he came back, he immediately told me what had happened.

Q Can you recall, sir, what Mr. Acton told you occurred in Reno?

MR. KIRSCHNER: Objection. It is not in substance. It is hearsay. Mr. Acton has already testified to it.

THE COURT: Overruled.

A Mr. Acton told me that they had first contacted Mr. Scardino in Houston, who flew in to Reno, and they also contacted Mr. McKibben, and it seems to be that Mr. McKibben had been taking the book and selling it without Mr. Scardino knowing about it or anything like that.

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Q Is this the conversation you had with Mr. Acton?

A Mr. Acton, yes, and that usually McKibben had owned up to selling the stock, and he never did have any intention of setting up a loan on it.

Q Did Mr. Acton tell you who was present?

A Yes, he said that it was he and Mr. Scardino and McKibben and Zuber and Howard and a couple of friends of McKibben.

Q Did he mention any of their names?

A He said it was -- one of them I can remember was Al Glazier, and like they all talked it out and they agreed whatever they agreed to and --

Two meetings
Q Did Mr. Acton tell you anything about what happened at the meeting? Apart from any agreement that was reached, a specific incident that occurred at the meeting?

A Yes, I believe he said that -- I mean the thing that sticks in my mind about the meeting was that Mr. McKibben kept lying and lying about it, and that Mr. Zuber got very angry with McKibben about talking all these lies, and that McKibben's men and Zuber agreed, you know, that McKibben was lying.

Q Now did you come across a man, sir, some time

jks

thereafter when Mr. Amon went to New York, to your knowledge?

A Yes, he did.

Q And did you have any conversations with Mr. Amon prior to his going to New York concerning what he was going to do in New York?

A I don't recall -- he went to New York a couple of times. I don't recall what the first incident was. One of them was -- I didn't even know about -- No, I don't know.

Q Did there come a time, sir, when you received a fur coat from Mr. Amon?

A Yes.

Q Did you have a conversation with him at that time as to where he had gotten the fur coat?

A Right -- not before he got it, but when he brought it back, because it was a surprise to me. He said that he had traded some Pioneer stock to a Mr. Allen Graham for the coats.

Q And what did you receive out of that?

A One coat for my wife.

Q Did you ever have that coat appraised?

A Yes, I did.

Q And what was it --

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Clegg-direct

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1 A I don't remember if I had it appraised, but
2
3 I sold it to make payroll at the mine one week and --

4 Q How much?

5 A I think I got like 2500 or 5000 or something
6 like that. It was a very expensive coat.

7 Q Did there come a time, sir, when Pioneer Development
8 Corporation was sold to another group?

9 A Yes, I believe it was around March or so.

10 Q Would you tell us, sir, did you attend a meeting
11 on March 14, 1970?

12 A With whom?

13 Q In connection with that transaction?

14 A I don't remember the exact date, but somewhere in
15 there I met with a Mr. Lou Marder, who was desirous of
16 acquiring the assets of Pioneer Development.

17 Q Now, sir, at that time what were the assets
18 of Pioneer Development?

19 A Precise Power, the mine, the debentures, a note
20 from American Aluminum, I believe, were the assets.

21 Q Was the note from American Aluminum for 35,000?

22 A Correct.

23 Q What of those assets went to Mr. Marder?

24 A Everything except the mine.

25 Q What about the note from American Aluminum?

1 A Oh, right. At that time we transferred that
2
3 note to Mr. Bill Morgan in exchange for the stock he never
4 received from Mr. Seel.

5 Q Now, sir, do you recall what the assets of
6 Precise Power were valued at at that meeting?

7 A No, I don't.

8 MR. WALKER: Well, the minutes speak for them-
9 selves, your Honor.

10 Q Mr. Acton, did there come a time when you
11 prepared a financial statement for Pioneer Development
12 Corporation?

13 A Yes, there was.

14 Q I show you Government's Exhibit 11 and ask you if
15 this is the document?

16 A Yes, it is.

17 Q Now, sir, with regard to this financial state-
18 ment, is it dated February 2, 1970?

19 A Yes, it is.

20 Q And does it state at the bottom, "Prepared with-
21 out audit"?

22 A Yes, it does.

23 Q And did you prepare this essentially yourself
24 without the use of a Certified Public Accountant?

25 A No, I used a Certified Public Accountant.